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GENERAL NOTICES

NOTICE 1554 OF 1996

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10 (3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 554 of 1993, as published in *Government Gazette* No. 14895 dated 23 June 1993, General Notice 503 of 1994, as published in *Government Gazette* No. 15758 dated 27 May 1994, General Notice 512 of 1996, as published in *Government Gazette* No. 17142 dated 26 April 1996, and General Notice 1231 of 1996, as published in *Government Gazette* No. 17399 dated 30 August 1996, as set out in the Schedule.

A. ERWIN

Minister of Trade and Industry

ALGEMENE KENNISGEWINGS

KENNISGEWING 1554 VAN 1996

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 554 van 1993, soos gepubliseer in *Staatskoerant* No. 14895 gedateer 23 Junie 1993, Algemene Kennisgewing 503 van 1994, soos gepubliseer in *Staatskoerant* No. 15758 gedateer 27 Mei 1994, Algemene Kennisgewing 512 van 1996, soos gepubliseer in *Staatskoerant* No. 17142 gedateer 26 April 1996, en Algemene Kennisgewing 1231 van 1996, soos gepubliseer in *Staatskoerant* No. 17399 gedateer 30 Augustus 1996, soos in die Bylae uiteengesit.

A. ERWIN

Minister van Handel en Nywerheid

SCHEDULE / BYLAE

**BUSINESS PRACTICES COMMITTEE
REPORT NO. 41
TERRA EXPLORATION AND DEVELOPMENT LIMITED**

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TERRA EXPLORATION AND DEVELOPMENT LIMITED**Paragraph
No.****1. INTRODUCTION**

- 1 As a result of several complaints received by the Business Practices Committee (the Committee) pertaining to the business practices of Terra Exploration and Development Ltd, related companies and persons, the Committee decided to institute a preliminary investigation in terms of section 4(1)(c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988) (the Act). This investigation was followed by an investigation in terms of section 8(1)(a) of the Act.

- 2 The complaints concerned business practices whereby seemingly attractive shares in public companies, such as Terra Exploration and Development Ltd were sold. The sellers of the shares concerned invariably promised listings on the Johannesburg Stock Exchange (JSE). The shares were to be listed under mining exploration.

2. THE ANNOUNCEMENTS IN THE GOVERNMENT GAZETTE

- 3 In Notice 554 published in Government Gazette No. 14895 of 23 June 1993, notice was given of the Committee's intention to institute an investigation in terms of section 8(1)(a) of the Act into the business practices conducted by Terra Exploration and Development Ltd (Terra), F C F Developing Capital Ltd, Falcon Developing Capital Ltd (Faldev), F C F Securities Ltd, Falcon Corporate Finance (Pty) Ltd (Falcon), R E F Corporate Finance (Pty) Ltd, Terra Holdings (Pty) Ltd, Principal Securities (Pty) Ltd (Principal), Principal Mining (Pty) Ltd, Manresa Investments CC, La Roc Mining and Investment Ltd (La Roc), subsidiaries of the above-mentioned undertakings, Amargant David Romero (Romero), Cecil Loftie-Eaton (Eaton), Michael Putnam de Pinna (De Pinna), Wendy Harris (Harris), Maggi Payne and any employee, agent, representative, director or broker of the above-mentioned.

In Notice 503 published in Government Gazette No. 15758 of 27 May 1994, notice was given of the Committee's intention to institute an investigation in terms of section 8(1)(a) of the Act into the business practices conducted by Diatom Filter Minerals Ltd

(Diatom), International Franchise Investments Ltd, Overseas Mining (Pty) Ltd, Ref Investments (Pty) Ltd, Ref Securities (Pty) Ltd, Ref Mining Holdings (Pty) Ltd, Ref Investment Corporation Ltd (Ref), C Oberholser, L Hindmarch (Hindmarch) and any director, agent, broker, employee or representative of the above-mentioned.

In Notice 512 published in Government Gazette No. 17142 of 26 April 1996, notice was given of the Committee's intention to institute an investigation in terms of section 8(1)(a) of the Act into the business practices of Principal Mining and Industrial Securities (Pty) Ltd (Prinmin), Overseas Mining Ltd (Overseas), Margeuritha Jacoba Payne (ID No. 511030 0143 007), Charles Oberholster (Oberholster) and any director (as applicable), employee, agent and/or representative of any of the above-mentioned.

The Committee gave further notice that the aforementioned intended investigation had a direct bearing on the investigations announced in General Notice 554 published in Government Gazette No. 14895 dated 23 June 1993 and General Notice 503 published in Government Gazette No. 15758 dated 27 May 1994.

In Notice 1231 published in Government Gazette No. 17399 of 30 August 1996, notice was given of the Committee's intention to institute an investigation in terms of section 8(1)(a) of the Act into the business practices of El Dorado Gold Mines (Pty) Ltd (El Dorado), Great African Resources Ltd (Great African), Hemisphere Mining and Developments Ltd (Hemisphere), New Era Mines Ltd (New Era), Redbark Mines Ltd (Redbark), Terra Precious Stones (Pty) Ltd and any director, employee, agent and/or representative.

- 4 The Committee received submissions from a number of Terra shareholders after publication of the notices of the investigation in the Government Gazette. The Committee also held hearings and had discussions with Romero, De Pinna, Harris, Hindmarch, Oberholster and various other parties.

3. THE COMPANIES AND THE BUSINESS PRACTICES

- 5 The time covered by this report could be broadly divided into three eras, namely, the De Pinna and Harris era, the Romero era and the Hindmarch era.

3.1 Michael Putnam de Pinna (ID No. 410703 5103 109)

and

Wendy Harris (British citizen born in Falmouth on 6 October 1935 and granted permanent residence in the RSA during 1963, immigration permit No. L/2298/63)

- 6 De Pinna and Harris acted as directors for various private and public companies. These companies were not listed on the JSE. In many instances the private companies held shares in the public companies. The assets of some of these unlisted companies consisted *inter alia* of mining rights over certain properties. The following information could serve as an indication of the aforementioned:

- 7 - Pingold (Pty) Ltd (Pingold) of which De Pinna was a director, held 3 million shares in Redbark. On 30 November 1990 De Pinna and Harris each personally held 2 000 shares in Redbark.
- 8 - Diamond Diggings (Pty) Ltd (Diamond Diggings) of which De Pinna and Harris were directors, held 2,7 million shares in Great African as at 17 February 1984.
- 9 - Stone Mining Investments (Pty) Ltd (Stone Mining) of which De Pinna was a director, held 101 120 shares in Great African as at 30 November 1990.
- 10 - Tyrolston (Pty) Ltd (Tyrolston) of which De Pinna was a director, held 993 993 shares in Redbark at a date prior to 9 January 1989.
- 11 - Nafcan Holdings (Pty) Ltd (Nafcan) of which De Pinna was a director, held 40 717 shares in Hemisphere as at 30 November 1990. Nafcan also held 904 000 shares in New Era as at 24 June 1974.
- 12 - Theokass Investments (Pty) Ltd (Theokass) of which De Pinna was a director, held 1 million shares in New Era as at 15 December 1980.
- 13 - Tinada (Pty) Ltd (Tinada) of which De Pinna was a director, held 84 295 shares in Hemisphere as at 30 November 1990.
- 14 - Tamarron Investment Enterprises (Pty) Ltd (Tamarron) of which Harris was a director, held 3 million shares in La Roc some time prior to 13 August 1990.
- 15 - Redbark; Great African; Hemisphere and New Era were some of the public companies of which both De Pinna and Harris acted as directors.

- 16 In 1971 Prinmin was established as a share promotion company with De Pinna as one of the directors. Harris informed the Committee in a letter dated 9 December 1992 that Prinmin sold shares in different unlisted mining companies.

The shares were sold by brokers working for Prinmin. Some time after 1971 the marketing of Prinmin shares was done by Principal of which Harris was the sole director. On 9 December 1992 Harris claimed *inter alia* in a letter addressed to the Committee that Prinmin "ran at a loss every year until in 1989 it went into liquidation." Confusing as it may be, De Pinna three years later claimed in a letter dated 1 October 1992, that he held a directorship in Prinmin as at 31 July 1992.

- 17 The major companies in which shares were sold through the involvement of De Pinna and Harris, were Hemisphere, Redbark, Great African, La Roc and New Era. However, to be able to understand the activities of the various persons and concerns it was deemed necessary to report briefly on the aforementioned as well as several other

companies:

18 (a) Hemisphere Mining and Developments Ltd (05/05755/06)

From documents at the disposal of the Committee it was established that Jumpers Consolidated Gold Mining Company Ltd was incorporated in South Africa on 30 June 1934. In April 1976 the name was changed to Hemisphere. Between 1976 and 1977 more than 4,125 million shares were allotted, by virtue of the company's take-over offer, to the shareholders of New Era and Redbark. In terms of a rights offer which expired in October 1982 a further 205 525 shares were issued to existing shareholders. Total shares issued as at 5 October 1982 were 4,7 million. As at September 1984, De Pinna was a director of both Hemisphere and Nafcan. (Nafcan - refer paragraph 11).

19 On 24 September 1984 De Pinna, in his capacity as director of Nafcan, made an offer for the sale of 100 000 shares in Hemisphere. The following statements were contained in this offer:

"This offer is made by Nafcan Holdings (Pty) Ltd ... who is acting as Principal."

"The 100 000 shares now being offered are a portion (of) the share(s) acquired by Nafcan Holdings (Pty) Ltd by virtue of a take-over dated 2nd August 1976. Hemisphere Mining and Development Limited issued one share in its Company to Nafcan Holdings (Pty) Ltd for each share held in New Era Mines Ltd. In terms of the said take-over offer these shares were issued to Nafcan Holdings (Pty) Ltd."

The shares are now being offered at R3,25 per share. This price is regarded as reasonable because of Hemisphere Mining and Development Ltd holding through its subsidiary Redbark Mines Ltd of the Witvlake Pan ..."

Committee's Note:

The Witvlake Pan was the mineral assets of Yellowbark Mines (Pty) Ltd (Yellowbark) which in turn was a subsidiary of Redbark. The Witvlake Pan mineral deposit features prominently throughout this report.

20 "On the 16th day of June 1978 a Joint Venture Agreement was signed with Yellowbark Mines (Pty) Ltd (subsidiary of Redbark Mines Ltd) and a major international Company. Development is taking place re the viability and marketing ... in order to form a Mining Company to commence Production."

The offer elaborated on the testing, the many exciting usages, the cheap strip mining that can be operated and the prospects to replace the import market of gypsum.

21 "Hemisphere, through its subsidiary Redbark Mines Limited and New Era Mines Limited also holds equity of many claims in the North West Cape. The subsidiary company of Hemisphere Mining increased its equity in the Gold Mining Company in the Barberton area to 50%."

The offer elaborated on infrastructure, plant and equipment: "Production started and a larger ball mill was commissioned to substantially increase milled tonnage" and "...ore is being transported to the milling plant for stock piling."

Committee's Note:

In all relevant documents at the disposal of the Committee, El Dorado featured prominently as the gold mine operation. It was therefore a reasonable deduction that the above-mentioned information about production and stock piling had a bearing on El Dorado.

- 22 The offer document also stated that production was suspended "recently in order to develop further underground minerals reserves and also to allow incorporation of Escom power."

Committee's Note:

"From the aforecited it is apparent that the offer document dated 24 September 1984 was not a primary issue to raise capital to develop Hemisphere but a secondary sale of shares in which Nafcan was the principal beneficiary. In fact the offer document did not state the reason for the sale of shares in Hemisphere. Secondary sales of shares feature prominently throughout this report.

- 23 The following information was contained in the directors' report of Hemisphere for the year ended 30 June 1983 and in the notes to the financial statements which all formed part of the aforecited offer document:

- 24 - **"Redbark Mines Ltd and its Subsidiaries**

At the date of this report Redbark is in the process of acquiring from its director, the rights to prospect and search for precious stones on portion of the farm Louieville in the Transvaal." This information will again be discussed in paragraph 38.

- 25 - "The Directors of the subsidiary companies have decided not to incorporate their associated companies' affairs in their Financial Statements by the equity method of accounting because the trading results are considered to be not sufficient material."

Committee's Note:

*This remark is interpreted by the Committee to have a bearing on the profitability of the associated companies. The associated companies reflected in the offer document are *inter alia* Yellowbark, National Quartzite Suppliers (Pty) Ltd and Lenmike Investments (Pty) Ltd.*

This information will also be discussed later in the report - see paragraphs 105, 153 and 217.

- 26 - "No scientific value can be placed on the prospecting claims, notarial mining leases and mineral right options at this stage."

The prospecting claims, mineral right options and notarial mining leases at cost were reflected as R255 015. It is the opinion of the Committee that the aforecited statement of "no scientific value" must also have a bearing on Hemisphere's holding, through its subsidiary Redbark, of the Witvakte Pan mentioned in the aforecited offer dated 24 September 1984.

- 27 According to Hemisphere's 1990 annual financial statements the unissued share capital of the company was under the control of its directors, which included De Pinna and Harris. At 30 June 1990 the company's total assets were R2,39 million. The major asset was a loan of R1,99 million to New Era. Hemisphere had a 27 per cent investment in Redbark and therefore considered Redbark as an associated company.

- 28 From documents made available to the Committee it appeared that De Pinna and Harris were involved in the sale of shares in Hemisphere to the value of R4,326 million from 1979 to 1985.

- 29 (b) El Dorado Gold Mines (Pty) Ltd (81/01550/07)

The annual financial statements as at 30 June 1990 stated that El Dorado carried on business as a gold mine. De Pinna was the only director. From other documents it was established that De Pinna personally had a 35 per cent share holding in El Dorado; New Era held 50 per cent and Redbark held 15 per cent. De Pinna and Harris were directors of both New Era and Redbark.

- 30 From the aforecited it is apparent that De Pinna through direct and indirect means had an influence on a large percentage of the share capital of El Dorado. The existence of El Dorado featured prominently in the marketing of Redbark shares and should as such be read in conjunction with the report on the latter company. (Redbark - refer paragraph 35).

- 31 In a review of the mining potential of El Dorado dated 14 February 1992 as prepared by a geologist and contained in the proposed pre-listing document of Terra, the following were some of the statements:

"Although extensive development of drives and cross cuts has been done ... virtually no stoping has taken place. Production can thus be regarded as minimal during the life of the mine."

Committee's Note:

A stope is a steplike part of a mine where ore etc. is being extracted. (Source: The Concise Oxford Dictionary 7th edition). The above-mentioned statement by the geologist places a serious question mark behind the statement of "substantially increase milled tonnage" and the stock piling of ore as claimed by De Pinna and recorded in paragraph 21.

32 Under the heading "Economic Aspects" the geologist *inter alia* stated the following:

"The Banded Ironstone Formation (B.I.F.) ... The sporadic nature and structural association of gold values in the explored areas do not yield consistent grade values in the B.I.F. exceeding 2,35 g/t, which could sustain a major mining operation. Collectively the development exploration on both sections of the El Dorado mine displays sufficient exposure of the B.I.F. to warrant such a deduction."

33 "Shear zones". The major shear zone ... shows significant gold values ... This little venture ... could yield a net profit of R817 700. This operation could be completely executed within 6 months ... If the average grade of 8 g/t is maintained ... Such a reserve could sustain a low key mining operation (@ 100 m.t./day) for 3 years. A further projection, based on the same structural and Au (Au = gold) grade assumptions, can be extended laterally up to the eastern boundary of the concession area and downwards to the 450 m level ... The productive life of such a mining venture would exceed 20 years at an annual production tempo of 25 000 m.t. of reef."

34 It is the opinion of the Committee that the statements as recorded in paragraphs 32 and 33 point to the viability of a low key operation depending on a favourable gold price unless major development could take place, resulting in more sophisticated mining at 450 metre levels. Even De Pinna in his capacity as director of Pingold stated the following in an offer for Redbark shares dated around 21 October 1989:

"It is still recommended by Eldorado (sic) ... to sell the mine ... as the cost today of putting an underground gold mine into production would be beyond the financial means of Eldorado ..."

35 (c) Redbark Mines Limited (71/09658/06)

This company was incorporated in August 1971. The authorised share capital was 7,5 million shares of 10 cents each and all shares had equal rights and ranked *pari passu* in all respects. From documents obtained it was apparent that during 1971, seven shares were issued for cash at 10 cents each, a further 6 000 shares were issued fully paid at 15 cents each and 993 993 shares were issued fully paid to Tyrolston at 10 cents each. In 1972 another 600 000 shares were issued and offered for sale in terms of a prospectus at 15 cents each. In 1973 the price increased to 20 cents and 409 400 shares were offered for sale in terms of a rights offer. A further 490 600 shares were offered for sale in 1973 in terms of a prospectus at 60 cents per share.

36 This means that 2,5 million shares were issued and that R566 540 was raised. It was claimed that the proceeds of all shares sold since 1972 were banked into the trust account of certain auditors, but that after 20 years the records were not available for inspection.

37 The reason why Tyrolston was issued with 993 993 shares at par i.e. 5 cents per share less than the previous issue remained unknown to the Committee. However, it was established that De Pinna was a director of Tyrolston (Pty) Ltd.

38 In paragraph 24 it was recorded that Redbark was in the process of acquiring from its director the rights to prospect and search for precious stones on portion of the farm Louieville. In paragraph 7 it was recorded that Pingold held 3 million shares in Redbark. On 18 October 1985, again on 21 September 1987, a third time on 9 January 1989 and a fourth time around 21 October 1989 (hereinafter called the October 1989 offer) De Pinna in his capacity as director of Pingold made offers for the sale of shares in Redbark. Each offer was in respect of 200 000 shares. The four offers were more or less worded in the same manner and the following excerpts were taken from these documents:

39 "This offer is made by Pingold (Pty) Ltd ... who is acting as the principal."

"The 200 000 shares now being offered are a portion of the 3 000 000 shares of 10 cents each issued at Par on the 21st day of May 1984 to Pingold (Pty) Ltd as full consideration for the acquisition of its rights and title to Portion 10 (a portion of portion 1) of the farm Louieville District Barberton Transvaal."

"The rights being: The right to prospect minerals and precious stones ..."

Committee's Note:

From the aforecited it is apparent that Pingold (Pty) Ltd and not the director of Redbark (refer paragraph 38) received the full consideration for the acquisition of the Louieville interest. Louieville represented the mineral assets of El Dorado.

40 In the first offer for Redbark shares dated 18 October 1985, the shares were offered at R2,65 per share. In the other three offers the price was increased to R3,50 per share. All the offers stated that major developments took place on the Witvlake Pan:

"The shares are now being offered at R3,50 per share. The reason for the increase in the price of the share is because of the major developments of the Witvlake Pan which is owned by Yellowbark/Concor/Reef Nigel Limited ..."

Committee's Note:

Reef Nigel Exploration Ltd (Reef Nigel) was a company which listing on the Johannesburg Stock Exchange was withdrawn on 31 December 1978 due to abolishment of the secondary section. The listing was never since reinstated.

41 The statement recorded in paragraph 40 that Witvlake Pan was owned by Yellowbark/Concor/Reef Nigel Ltd was not altogether correct. De Pinna stated later in the October 1989 offer i.e. the fourth offer for Redbark shares, that Concor Construction (Pty) Ltd (Concor) was bought out on 27 October 1988. Concor could therefore not be the co-owner of Witvlake Pan on 9 January 1989.

42 Redbark had an effective holding of 59 per cent in Yellowbark. Harris also confirmed in writing that the assets of Redbark included a 50 per cent shareholding in Witvlake Pan, the mineral asset of Yellowbark.

43 In the third offer for Redbark shares dated 9 January 1989 De Pinna went on and stated:

"A further reason for the increase in the price of the shares is that immediately to the North of the property ... acquired by Redbark Mines Ltd, a gold mine has come into production at The Three Sisters Mine approximately 5 km from Eldorado ... The Three Sisters is owned by Gencor."

"With the understanding of certain exploration and development gained from the said gold mine, exploration and development commenced on Louieville. On the 28th day of June 1985 the Directors of Redbark Mines Ltd successfully secured a 15% interest in the Eldorado Gold Mines (Pty) Ltd."

44 From the aforecited it is apparent that:

- De Pinna through Pingold intended to sell with this offer 200 000 Redbark shares at R3,50 per share. Redbark held a 15 per cent share holding in El Dorado and this was considered as part of the underlying value.
- De Pinna claimed that Redbark shares increased tremendously in value due to the 50 per cent and 15 per cent holding in Yellowbark and El Dorado respectively and because of the potential of these two concerns.

45 In its investigation the Committee could not find evidence to substantiate the claims that the value of Redbark shares increased because of "the major developments of Witvlake Pan which is owned by Yellowbark" and the potential of El Dorado. According to documents in possession of the Committee it appeared that Yellowbark, as far back as 1978, had entered into a joint venture agreement with Concor to ascertain the viability of forming a mining company to commence production. Eleven years later the following statements were impressed:

"... it seems that Sepio-Carbonate has the requirement for many exciting usages."

"... the above product may have its most important application, ..."

"... cheap strip mining ... can be operated ..."

"... the Directors are confident that the Sepio-Carbonate can be supplied."

"It was decided to find a 'dry process' ..."

"It is believed that a milling operation coupled with air filtering could produce a marketable product."

46 From the aforecited it is apparent that since 1978 Witvlake Pan was not brought to a proper production status and neither was it in, or even near such a status at the time of the October 1989 offer for Redbark shares. Eight months later in the financial statements of Redbark for the period ended 30 June 1990 it was stated that:

"The joint venture with Concor has been terminated." Even in March 1993 Dr I Goldberg, a consultant for exploration, mining geology and mineral economics stated *inter alia* in the conclusion of a report on the Witvlake Pan that "further exploratory work is deemed warranted. This should take the form of drilling on a grid-basis and close examination of the drilled constituents down to granite level."

- 47 In paragraph 40 it was recorded that all the offers for Redbark shares made reference to the major developments on the Witvlake Pan. In the October 1989 offer for the sale of shares in Redbark the "major development of the Witvlake Pan" was brought up and the 1978 joint venture agreement between Yellowbark and Concor surfaced again. Now in contrast to paragraph 45 of this report it was stated that a mining company was not formed between Yellowbark and Concor, "as further testing and development was taking place." Since 1978 to 1989 eleven years had passed to ascertain the viability of forming a mining company. In the October 1989 offer it was stated that the mining company was not formed, yet it was claimed that "testing and development was taking place."

Committee's Note:

As the mining company was still not formed it was highly improbable that production could take place and it could be anyone's guess as to what was meant by "development."

- 48 The October 1989 offer again referred to the potential of El Dorado and the 15 per cent interest successfully secured on 28 June 1985, i.e. close to four years prior to the October 1989 offer. Yet in the same document it was recommended to sell "the deposit and equipment", the reason being "as the cost today of putting an underground gold mine into production would be beyond the financial means of El Dorado ..."

- 49 The following statement appeared in the general review of Redbark's affairs for the year ended 30 June 1988, i.e. 16 months prior to the October 1989 offer for Redbark shares:

"Eldorado Gold Mines (Pty) Ltd. This company has now ceased operations and the directors are negotiating for a suitable purchaser."

Committee's Note:

It could be argued that El Dorado did not have the financial means but that a large mining house would be in the position to do the necessary development, and therefore the potential lay in the selling of the mine. That might be so but in the same offer document it was stated that "No drilling was conducted ... The underground reserves are therefore still unknown ..."

It is the opinion of the Committee that the potential of El Dorado now rested on pure speculation. To drop the name of a large mining concern and to mention the presence of another mine in the vicinity as recorded in paragraph 43 formed all part of substantiating the Committee's opinion of speculation.

- 50 According to the 1990 annual financial statements of Redbark, De Pinna and Harris were the directors and the total assets were about R773 500. The major investment was approximately R426 000 in subsidiaries. Mineral rights (Louieville) for the amount of R300 000 was considered as another major investment and was as such included in the asset figure. The financial statements reflected a turnover of R1 800 (which consisted of a management fee only) and a net operating loss of R8 168. Redbark also held 100 per cent shareholding in Greenbark Mines (Pty) Ltd (Greenbark) and Bluebark Mines (Pty) Ltd (Bluebark). As recorded previously in paragraph 42 it also held 59 per cent in Yellowbark. It will be necessary to report later in more detail about Yellowbark and the important role it played in the activities which took place around Terra, Diatom and Overseas.
- 51 Redbark's 1990 financial statements were qualified by the auditors. The auditors stated *inter alia* -
- "... because of the nature of the group's assets ... no audit procedures which we could adopt ... to formulate an opinion as to the value of the mineral rights, prospecting claims, notarial mining leases, and capital development expenditure ... we are unable to express an opinion as to the value of the company's investment in subsidiaries or the ability of such subsidiaries to repay their indebtedness to this company."
- 52 In contrast to this, in a letter dated 21 November 1990 and again on 12 December 1990 (on a Principal letterhead and addressed to a Redbark shareholder) Harris stated that Redbark shares represented an "... extremely attractive investment."
- 53 It was also stated that Principal was prepared to guarantee that the shares purchased for 35 cents would be sold at the expense of Principal for not less than 70 cents per share within six months.
- 54 In a letter addressed to another investor and dated 9 November 1990, Harris wrote that the assets of Redbark included a 50 per cent shareholding in the Witvlake Pan:
- 55 "... situated in one of the most exciting mineral areas in the country. Anglo American is proceeding with a heavy mineral project only 8 km from our deposit. ... In addition, Redbark owns an interest in the Eldorado Gold Mine near Barberton. The mining arm of a local corporate group have approached the board, indicating their wish to acquire as many shares as possible in Redbark Mines in order to consolidate large mining assets into their company, and then to seek a listing on the JSE. We consider that in view of the above, Redbark shares represent an extremely attractive investment ... we consider that there would be strong capital growth in these shares..."
- 56 This investor was invited by Harris to buy 20 000 shares in Redbark at 50 cents each. In this case it was guaranteed by Principal that the price of the share will be R1,10 within six months.
- 57 The legal representative of an investor informed the Committee that, before the aforementioned six months in which the share would have reached a price of R1,10 had lapsed, Terra offered to buy the shareholder's Redbark shares at R1 per share.

Payment was effected by means of four Terra shares for one Redbark share. The Terra shares were thus valued at 25 cents each. It should be noted that shareholders did not receive cash but merely shares in another company.

58 From the aforecited it is apparent that the four offer documents for the sale of shares in Redbark were not primary issues to raise capital to develop the assets but were secondary sales in shares in which Pingold was the principal beneficiary.

59 While the investigation into the activities around Redbark continued, another facet of the business practices applied by Harris came to light. On a Principal letter head dated 27 June 1991 Harris informed an investor that his capital of R5 000 "will be invested for one month, ... interest R2 000."

60 The legal representative of another investor informed the Committee that his client also invested R5 000 with Principal on more than one occasion. From the correspondence it was concluded that substantial interest was offered. The following quotations from the correspondence of the shareholder's legal advisor are self-explanatory:

61 "On the day of the investment our clients received a cheque drawn by Principal Securities, postdated for a period of 6 months... When, after 6 months, the aforesaid cheque was deposited, it was dishonoured."

"During March 1991 (the client) invested a further R5 000 with Mrs Harris On making the investment (the client) received a postdated cheque signed by Mrs Harris on behalf of Tamarron Investments Enterprises (Pty) Ltd. The cheque was deposited ... but was dishonoured and returned to our client ..."

Committee's Note:

The Committee is in possession of a list of directorships held by Harris as at 20 November 1992. According to this document Harris was a director of Tamarron. (See also paragraph 14).

62 The legal representative of yet another "investor" with Principal, informed the Committee that judgment was obtained during 1992 against Principal and Tamarron:

63 - An amount of R2 500 was paid to Principal to be invested on behalf of the investor. Principal breached an oral agreement in that it failed to pay R3 500 to the investor on due date.

64 - Tamarron issued a cheque of R6 500 payable on 23 July 1991 to the same investor. The cheque was dishonoured and marked "Account closed".

- As at 16 July 1993, the date of the correspondence to the Committee, the legal advisor had been unable to recover the judgement debt.

- 65 Another individual invested R10 000 for 6 months with Principal on the understanding that he will receive five monthly payments of R1 100 each plus a final payment of R11 100. A cash cheque of R11 100 issued by Lockhaven Enterprises was dishonoured and marked: "Account closed".

Committee's Note:

From a document at the disposal of the Committee it was established that Lockhaven Enterprises was the trading name of one Bradley de Pinna on or about 29 June 1992.

- 66 On 11 June 1993 Principal undertook to repay the amount in four monthly instalments of R2 775 starting 16 June 1993 and further required that no action should be instituted against Lockhaven Enterprises. The investor claimed that only the first payment was made and that Principal then refused to meet its obligations.
- 67 From other correspondence on Principal letter heads it was established that this requirement of "no action to be instituted" was raised as far back as 15 September 1992 in respect of "debt" of P S Enterprises under circumstances appearing to be similar to that of Lockhaven Enterprises.

Committee's Note:

The Committee was not in the position to determine the name(s) of the person(s) behind P S Enterprises. It was however noted that the signatory on cheques made out by Lockhaven Enterprises and P S Enterprises appeared to be one and the same person.

From the aforecited it is apparent that Harris made statements which raised expectations with the investors. Harris, through Principal issued "guarantees" that shares will double in price within 6 months from purchase. Such statements could not reasonably be reconciled with the qualifications made by the auditors on Redbark's 1990 financial statements as recorded in paragraph 51.

Furthermore "investments" were taken with promises of astronomical returns. In stark contrast to this, evidence was found that cheques for the repayment of these investments were dishonoured. Harris could not plead ignorance to the world of finance as she was a director at some stage or other of at least seven companies and also claimed to be an alternate director to De Pinna for all companies of which he was a director from date of incorporation until (at least) 20 November 1992.

- 68 From documents made available to the Committee it appeared that De Pinna and Harris were involved in the sale of shares in Redbark to the value of R7,410 million from 1971 to 1990.

- 69 (d) Great African Resources Limited (73/12993/06)

The company was incorporated in October 1973. The authorised share capital was 5 million shares of 1 cent each and all shares had equal rights and ranked *pari passu*

- in all respects. Shares allotted amounted to 5 000 at R1 each and were converted in November 1974 to 500 000 shares of 1 cent each. This information was obtained from an offer for sale of shares in the company dated 11 August 1984. From a different document obtained it was apparent that the 500 000 shares were allotted to New Era.
- 70 On 29 November 1974 a further 1 million shares of 1 cent each were issued in part payment for a cession by New Era of all its prospecting and mineral rights in the farm Canariesfontein A and B in the district of Namaqualand. On 11 October 1983 a further 1,2 million shares were issued and transferred to Diamond Diggings. (Refer paragraph 8). The reason for the issue and transfer to the latter company was not disclosed in the offer memorandum.
- 71 In the said offer memorandum dated 11 August 1984 as recorded in paragraph 69, De Pinna, in his capacity as director of Diamond Diggings offered 500 000 shares, a portion of the 1,2 million shares issued to Diamond Diggings at 1 cent each, at a price of R2 per share. The difference in value allegedly came about as Great African had negotiated a 50 per cent participation in an alluvial diamond mining venture at the Lichtenburg diggings. Plant and equipment were allegedly bought and diamonds were produced and sold.
- 72 From the aforecited it is apparent that 2,7 million of the authorised 5 million shares were issued. New Era possessed 1,5 million shares and Diamond Diggings owned the other 1,2 million shares, bringing the total to 2,7 million shares. If any one of these issued shares was to be sold the proceeds were due to either New Era or Diamond Diggings and Great African was therefore cash starved.
- 73 A further aspect which came to the attention of the Committee was an entry in the share register of Great African on 28 October 1986. Read in conjunction with other documents at hand it became apparent that 600 000 shares were debited against De Pinna's loan account but now the price was determined at 50 cents a share. However, for the period October 1984 until November 1986 the shares were sold at R2 each through the private placings, yet De Pinna obtained these shares at a discount of R1,50 per share. The Committee is not in possession of the financial records reflecting the loan account of De Pinna, but irrespective of whether money was owed by De Pinna or owed to De Pinna, the aforementioned "discount" was prejudicial to the other shareholders and by allowing this the directors did not act in the interest of the company. De Pinna and Harris were the directors of Great African.
- 74 According to the annual financial statements as at 30 June 1990 the issued share capital was 2 875 000 shares of 1 cent each. The total assets increased from R109 768 in 1989 to R478 437. The increase was due to the disposal of the investment in an associated company in exchange for 461 249 shares of R1 each in a listed company.

75 The Committee's calculation of the net asset value of the shares was as follows:

Total assets (R478 437) less loan payable (R368 434) divided by the number of shares issued (2 875 000) equals 3,8 cent per share. The same result was obtained when the issued share capital (R28 750) plus share premium (R88 250) less accumulated loss (R6 997) was divided by the number of shares issued. If the same calculation was applied to the comparative figures for the 1989 financial year when total assets was R109 768, the loan payable was R363 427 and the number of shares issued was 2 875 000, the net asset value was minus 8,8 cents per share.

76 From documents made available to the Committee it appeared that De Pinna and Harris were involved in the sale of shares in Great African to the value of R1,425 million from 1974 to 1986.

77 From the aforecited it is apparent that the offer document for the sale of shares in Great African dated 11 August 1984 was not a primary issue to raise capital to develop Great African but a secondary sale of shares in which Diamond Diggings was the principal beneficiary.

78 (e) La Roc Mining and Investment Ltd (90/01575/06)

The company was incorporated as a public company during March 1990. Its main business was in the field of mining and exploration and investment in companies. In documents obtained by the Committee, Harris and Prof Ryno Gerhard Kriel were stated as directors.

79 To attract funds for the necessary diamond mining operations, shares were issued through a number of private placings. The Committee has in its possession five such documents dated respectively 13 August 1990, 3 October 1990, 7 January 1991, 30 June 1992 and 24 August 1994.

80 In all five of these private placing documents the total number of shares authorised was stated as 50 million. In three successive documents the total number of shares offered for sale remained unaltered at 3 million, thereafter it was increased to 6 million. Therefore, these private placing documents gave the impression that no shares were sold previously and that each placing document was a fresh offer. Contradictory to this the Committee found documents indicating that 16 000 shares were sold during a period of time prior to the date of the fifth private placing.

Committee's Note:

It is the opinion of the Committee that in view of this fact all the private placing documents, including and after those dated 3 October 1990, were incorrect and misleading.

- 81 The purpose of the offer as stated in the first three private placing documents was:

"To finance the recovery plant and the infrastructure for an alluvial diamond operation in Barkley West (sic) ... the claim licences whereof are to be ceded in favour of Lockhaven Gems (Pty) Ltd, the COMPANY (meaning La Roc) owning 60% of the share capital of Lockhaven Gems (Pty) Ltd."

De Pinna was a director of Lockhaven Gems (Pty) Ltd. (Lockhaven Gems).

- 82 In the fourth private placing document dated 30 June 1992, the purpose of the offer was "to finance the recovery plant and the infrastructure for an alluvial diamond operation in the Potchefstroom area, a portion of the property whereby is made in favour of Reef Nigel Exploration Company Limited..."

Committee's Note:

It is the opinion of the Committee that the meaning of this quoted statement about the involvement of Reef Nigel Exploration Company Ltd was vague and that investors could only guess as to the meaning behind it.

- 83 It was further stated that "Lockhaven Enterprises has entered into an agreement with Reef Nigel whereby Lockhaven will supply its own diamond recovery equipment and will recover diamonds from the Reef Nigel property on a royalty and tributary basis..." Lockhaven Enterprises was the trading name of one Bradley de Pinna as recorded previously in the Committee's Note, paragraph 65.

- 84 The June 1992 private placing document also stated that payments by cheque should be "crossed 'not negotiable' ... drawn in favour of Lockhaven Enterprises." In short this meant that the proceeds of sales of shares went directly into the pocket of Bradley de Pinna.

Committee's Note:

From the afore-cited it appeared that Lockhaven Gems, Lockhaven Enterprises and Reef Nigel all received some or other benefit. The benefit received by the shareholders in La Roc remained obscure and was left to be seen.

- 85 It was also stated that "La Roc has already successfully concluded the following sale, whereby the Terra Exploration and Development Limited Company has issued 4 000 000 fully paid up shares as payment for La Roc's 72 mining claims at Barkley West ... The shares were issued to La Roc as full payment for the company's interest in the Barkley West claim."

- 86 According to particulars in the private placing documents 3 million La Roc shares were "issued to Tamarron Investment Enterprises (Proprietary) Limited for Cession of Rights." It was previously recorded in the Committee's Note, paragraph 61 that Harris was a director of Tamarron.

- 87 The August 1994 private placing was handled by one Ellen Terry Associates (Ellen Terry) who "have taken over the administration and Transfer duties of La Roc Mining and Investment Ltd and intends to put the Company firmly back in the alluvial diamond mining field..."
- 88 Ellen Terry claimed further that "we have one million shares that we are prepared to offer to existing shareholders at 10 cents per share before the offer is made to the public at 25 cents per share."

The purpose of the offer was: "To finance the recovery plant and the infrastructure for an alluvial diamond operation on the farm Bloukop in the Hays district, a portion of the property whereby is made in favour of Reef Nigel Exploration Ltd."

- 89 Ellen Terry further stated that "La Roc has entered into an agreement with Reef Nigel whereby La Roc will supply it's own diamond recovery plant and equipment and half the running expenses in return for 50% of the profits. The plant and equipment has been fully serviced and is ready to be transported to the new site."
- 90 It was further stated that Trans Hex Limited was engaged in an alluvial diamond venture on the farm to the north of Bloukop and was producing excellent stones.

Committee's Note:

As at 24 August 1994, the date of the offer memorandum, Trans Hex was assembling a diamond recovery plant but on a different farm and at a different location. Test work had not started and thus not a single diamond had been recovered. It is therefore the opinion of the Committee that the aforementioned statement recorded in paragraph 90 was devoid of any truth.

- 91 Prof R G Kriel, cited as a director of La Roc in the private placing documents said, during a telephone conversation with an official of the Committee that he had no knowledge of information of any new mining developments in La Roc or the location of the mine. Although he was a director of La Roc since incorporation it was alleged that he had nothing to do with the management thereof and also that he had no knowledge of Ellen Terry.
- 92 Harris was again given the opportunity to address the Committee on 24 November 1994 to provide details of La Roc and Ellen Terry. She failed to arrive and later offered the excuse that her absence was caused by a bleeding nose. The Committee was not put in a position to establish beyond reasonable doubt the existence or the whereabouts of Ellen Terry.
- 93 No mention was made in the August 1994 private placing document of any mining rights held by La Roc. No financial statements were lodged with the Registrar of Companies and no evidence could be found that other financial statements or books of record existed.

- 94 The private placing document stated that 3 million shares were issued to Tamarron "for cession of rights" and that 6 million shares were issued to Lockhaven Gems "for cession of rights."

As stated before Harris was a director of Tamarron and De Pinna was a director of Lockhaven Gems.

Committee's Note:

It was recorded in paragraph 78 that Harris and Prof R G Kriel were stated as directors. From records at the Registrar of Companies it was established that De Pinna was a subscriber of 100 ordinary shares in La Roc as at 7 February 1990. From the aforecited records it was also established that De Pinna and Harris resigned as directors on 26 March 1990. La Roc was deregistered as per Notice 1319/95 in Government Gazette 16898 dated 29 December 1995.

- 95 (f) New Era Mines Limited (05/22934/06)

The company was incorporated in August 1946 under the name of New Era Electric Company (Pty) Ltd. The name was changed to New Era Mines Ltd on 4 June 1974. The company was dormant during the five financial years up to the date of change of name.

- 96 The authorised share capital of the company was 4 million shares of 5 cents each and all shares had equal rights and rank *pari passu* in all respects. On 4 June 1974 the shares previously issued were converted into 396 000 shares of 5 cents each. A further 904 000 shares were issued to Nafcan as part consideration for the acquisition of certain rights to prospect for precious metals or base minerals on the Vioolsdrift South-District Namaqualand. In September 1974 the company again issued a further 1,7 million shares at par to Nafcan as full consideration for the acquisition of certain rights to prospect for precious metals or base minerals on the Vioolsdrift South-District Namaqualand and the Concordia Coloured Area District Namaqualand.

The issued share capital then stood at 3 million shares at 5 cents per share. The Concordia claims were all subject to obtaining permission from the Minister of Coloured Affairs.

- 97 On 30 October 1975 Nafcan offered an unknown portion (it was not disclosed in the offer document), of its holding of 904 000 New Era shares for sale at the inflated price of 75 cents per share. It was claimed by the directors that the difference of 70 cents per share came about as the company also acquired the mineral rights to certain other farms in the district of Namaqualand and in the area of Keetmanshoop.

- 98 In the consolidated balance sheet of New Era as at 30 June 1975 a loan to the amount of R57 960 obtained from Nafcan was reflected. From the notes to be read in conjunction with the consolidated annual financial statements it was noted that Nafcan would advance up to R100 000 to New Era to enable it to pursue any development.

Committee's Note:

From the aforesaid it is apparent that Nafcan held more than 1,7 million of the 3 million issued shares in New Era. It is the opinion of the Committee that Nafcan sold shares held in New Era for its own account and if New Era wanted cash to pursue development, loans from Nafcan to the amount of R100 000 would be considered. The Committee was led to believe that from January 1975 until June 1976 shares were sold at 75 cents each. From July 1976 until February 1977 the shares were sold at R1 each. An amount in excess of R1,354 million was "raised" by Nafcan for its own account and therefore New Era was left cash starved. De Pinna was a director of both Nafcan and New Era.

- 99 From the directors' report for the year ended 30 June 1975 it appeared that New Era had two subsidiaries i.e. Great African and Lenmike. The latter was a wholly owned subsidiary and acted as a nominee for certain claims.

- 100 On 15 December 1980 New Era issued the last 1 million shares of its authorised share capital to Theokass as full consideration for the acquisition of 37,5 per cent interest in certain 200 mineral claims on the farm Louieville, District Barberton.

Committee's Note:

Confusing as it may be, the 1 million shares issued to Theokass were issued at par i.e. 5 cents each; yet 5 years prior to this issue De Pinna in his capacity as one of the directors of Nafcan sold similar shares to investors at the inflated price of 75 cents per share for reasons already mentioned. (Refer paragraph 97).

Theokass obtained the shares at a discount of 70 cents per share compared to the price of the share 5 years previously and the proceeds of selling such shares would be for the account of Theokass only.

- 101 On 11 August 1983, De Pinna in his capacity as director of Theokass offered 100 000 shares, a portion of the 1 million shares issued at par, to investors at the inflated price of R2,50 per share. The alleged reasons for the inflated price were that infrastructure such as roads, foundations, addits and reef sampling had been concluded, plant and equipment had been purchased, production had commenced and additional property adjoining the existing claims had been purchased.

- 102 As at 28 February 1983, Theokass held a balance of 732 579 shares in New Era. This meant that since 15 December 1980 (the date on which New Era issued 1 million shares to Theokass) close to 268 000 shares were sold. The proceeds was obviously for the account of Theokass and was reflected as such in the financial statements. An income of R257 892 was obtained from the sale of the shares. An amount of R174 216 was claimed as expenses which included R101 258 for commission. R83 676 was transferred to the distributable reserve account of Theokass.

Committee's Note:

Distributable reserves may be paid out as dividends since the figure is made up out of accumulated profits from previous years.

- 103 The financial statements of February 1983 also reflected that a loan of R49 900 was granted for an indefinite period, unsecured and interest free. The auditors qualified their report by stating: "We have been unable to satisfy ourselves as to the recoverability of the loan to a company controlled by the director."

Committee's Note:

The aforecited situations serve as a classic example of how undeveloped assets changed hands from private companies to a public company. Payment for the assets took the form of transferring shares in the public company to the private companies who in turn sold the shares to the public. Both the offers for sales of shares in New Era dated 30 October 1975 and 11 August 1983 were not primary issues to raise capital to develop New Era but were secondary sales of shares in which Nafcan and Theokass were the principal beneficiaries. The public may be under the impression that the proceeds of the sales were intended for the development of the acquired undeveloped assets. The reality was that at least 3,604 million of the 4 million authorised shares were in the hands of Nafcan and Theokass and therefore at least 90 per cent of the proceeds of the sales was for their own account. New Era was cash starved and the private investors who bought the shares, had a stake in some undeveloped mineral deposit.

The cash and the distributable reserves as recorded in paragraph 102, in the hands of the private companies may be used at the discretion of the directors. In the case of Theokass and Nafcan, De Pinna was the director and Harris the alternate.

*In paragraph 96 it was recorded that Nafcan was issued with New Era shares in September 1974 as consideration *inter alia* for the right to prospect on the Concordia Coloured Area District Namaqualand. The Concordia claims were all subject to obtaining permission from the Minister of Coloured Affairs. Now, nine years later on 11 August 1983 De Pinna, as the director of Theokass again stated in the offer that the Concordia claims were still all subject to obtaining the required permission. Under these circumstances any value then placed on the development, if any, on these claims must be questionable and the development considered as unauthorised. The auditor's report on the financial position of New Era as at 30 June 1982 contained the following qualification and must be borne in mind when assessing the value of the Concordia claims:*

"Because of the nature of the company's fixed assets we are unable to formulate an opinion as to their value ..."

- 104 From documents made available to the Committee it appeared that De Pinna and Harris were involved in the sale of shares in New Era to the value of R2,524 million from 1975 to 1984.

105 (g) Yellowbark Mines (Pty) Ltd (73/05422/06)

In the financial statements as at 30 June 1990, De Pinna, Harris and a third person were stated as the directors of the company. According to the annual financial statements as at 30 June 1991, the mining assets consisted of notarial mining leases on portion 6 (known as Witvlakte) of the farm Baing Vley and portion 6 (known as Graafwater) of the farm Hartebeestekom. From other documentation in its possession the Committee established that the portions of these farms are next to each other, the boundary between them passing through the centre of the Witvlakte pan. It was claimed that the Witvlakte pan is a unique occurrence in that it contains a variety of industrial minerals ranging from dolcrete to kieselguhr to gypsum and kaolinite, all within an area of about five square kilometres.

106 Witvlakte Pan was first geologically examined in 1976, but due to a lack of water needed for mining and processing and the poor state of access roads into the area, development of the pan for mining purposes remained in the doldrums. Witvlakte Pan is located some 290 km in a direct line northwards from Cape Town and 180 km north of Saldanha. It lies three km from the West Coast and is 30 km by road from the nearest railway siding, Landplaas, and about 28 km northwest of Lutzville.

107 The financial statements of Yellowbark for 1990 and 1991 were prepared by different auditors. In both instances it was reported that no opinion as to the value of the assets was formulated or expressed. In the 1990 financial statements the value of the notarial mining leases was reflected as R62 765 and capital development expenditure stood at R55 752. In the 1991 financial statements the same notarial mining leases, then revalued by the directors, was reflected as R108,4 million (R108 412 152). The expenditure incurred prior to production had been capitalised to development expenditure which figure remained unchanged since 1990 at R55 752.

108 At this point it must be noted that geologist C B van Niekerk (Van Niekerk), in a document with the title Witvlakte project: A reassessment of potential mining reserves, dated 10 December 1991 stated *inter alia*: "All prospecting pits and trenches have been filled in and are virtually obliterated by erosion."

109 In the same document under the title "Capex", Van Niekerk stated that: "The venture therefore is dependant on finding an offset of 500 m.t./month for crude dolcrete ore to make it economically viable."

Committee's Note:

The aforesaid again put the "major development of the Witvlakte Pan" as claimed by De Pinna in 1989 and recorded in paragraph 45 under Redbark, under the spotlight. The "major developments" representing the expenditure of R55 752 in the 1991 financial statements and which developments appeared to be virtually obliterated by erosion within the same year, raised serious doubts as to the extent of such major developments.

3.2 Amargant David Romero (ID No. 630904 5185 004)

110 From documents obtained by the Committee it appeared that Romero, a B Compt graduate, began polishing his financial skills during the five years he spent with an internationally affiliated firm of auditors, the last year as audit manager. His experience was further broadened by a one year period as listings manager and management consultant for a listed company. In 1988 he joined FMS Holdings Limited on incorporation and was appointed to the board of directors. In the following paragraphs several companies in which Romero was involved, and the various activities of such companies will be briefly discussed:

111 (a) FMS Holdings Ltd

The company was incorporated as a public company on 2 March 1988. It was claimed that FMS Holdings Ltd (FMS Holdings) will principally be involved through its subsidiaries, in the mining supplies industry, concentrating mainly on products such as non-asbestos brake linings, conveyor idlers and button and cross drill bits.

112 Romero was group financial director for FMS Holdings. On 28 March 1988 a public offer comprising of 800 000 ordinary shares at R1 each and a preferential offer of 1 million ordinary shares also at R1 each were opened. It was the intention of FMS Holdings to commence business once the minimum subscription had been reached. The 1 million shares, at a price of 100 cents per share, were a preferential offer by FMS Holdings to shareholders in Equity and Venture Investments Limited (Equivest). Romero was the financial director of Equivest and the latter was the underwriter for the FMS Holdings share offer.

113 The following statement was made by FMS Holdings in the prospectus and offer document:

"Based on conservative projections aimed at capturing only 1% of the market in the first six months, rising to 20% after three years, FMS Holdings ... will earn pre-tax profits of R934 000 for the year ended 28 February 1989, rising to R7 800 000 (R7,8 million) for the year to 28 February 1990."

114 The auditors stated that the profit forecast based on the accounting bases and calculations of the consolidated profit forecast were solely the responsibility of the directors.

115 On 30 May 1989, fifteen months after the offer opened, Romero admitted to a shareholder in writing that the original aims of FMS Holdings could not be achieved, that FMS Holdings had ceased to operate and had become a dormant company since March 1989. The shareholder was informed *inter alia* that arrangements were made to swap each FMS Holdings share for two shares in Equivest through an arrangement with Tauron Corporate Finance Limited (Tauron). Romero was a director of Tauron and held 25 per cent of the equity.

116 (b) Equity and Venture Investments Limited

The company was incorporated as a public company on 5 August 1987. Equivest was referred to as a venture capital conglomerate, an investment company which put most of its resources into new and developing business ventures. Romero was the managing director of Equivest.

117 Nine days after its incorporation i.e. 14 August 1987, a prospectus for the offer for subscription of 3,5 million ordinary par value shares at an issue price of 85 cents per share was registered. A total of 604 620 Equivest shares were allotted in pursuance of the offer.

118 About six months later on 25 February 1988, existing shareholders were invited through a private offer document to take up three shares for every one held. The number of shares allotted in pursuance of this offer was 481 300 shares at an issue price of 100 cents per share.

119 On 1 March 1988 Equivest acquired 21 per cent of the share capital of FMS Idlers (Pty) Ltd (Idlers) and FMS RockDrill Components (Pty) Ltd (RockDrill). Four days later on 5 March 1988 Equivest sold Idlers and RockDrill as well as its holding in FMS Friction and Mining Supplies (Pty) Ltd (Mining Supplies) to FMS Holdings (discussed in paragraph 111) and received 1,1184 million ordinary shares (or 24,9 per cent) of the issued share capital of FMS Holdings. Romero was a director of Idlers, RockDrill and Mining Supplies.

120 On 8 June 1988 a prospectus for the offer for subscription of 3 million ordinary par value shares in Equivest at an issue price of R1,65 per share was registered. A total of 428 288 shares were allotted in pursuance of the offer.

121 In October 1988 the ordinary shares were subdivided from 1 share of 1 cent each to 4 shares of 0,25 cents (one quarter of one cent) each.

122 On 1 November 1988 Equivest brought out a private placing for the sale of 1 million ordinary shares at 50 cents each. The number of shares allotted in pursuance of this offer was 225 360 shares.

Committee's Note:

This meant that since August 1987 until June 1988 Equivest placed 1,514 million shares starting at a price of 85 cents and ending with a price of R1,65 per share. The shares were then subdivided 4:1 in October 1988 whereafter a further 225 360 shares were placed at 50 cents per share, bringing the total of shares then issued to 6,2 million.

123 On 20 April 1989 Equivest again brought out a private placing for the sale of 8 million ordinary par value shares of 0,25 cents (one quarter of one cent) each at an issue price of 50 cents per share.

In the prospectus it was stated *inter alia* that:

"Initially, Equivest was formed as an investment holding company which would spread its investments in the following areas:

- * New Ventures
- * Developing Businesses
- * Listed Companies

It achieved this successfully, in that shareholders in Equivest accordingly participated in a spread of investments which included:

- * FMS Holdings Limited - a new venture offering the potential for good returns from relatively modest capital commitments."

Committee's Note:

This statement was misleading. Romero was aware of the fact that FMS Holdings did not reach its original objectives and was dormant since March 1989 as recorded in paragraph 115.

124 It should be noted that around July 1989 shares in Equivest were marketed by Investmark International (Pty) Ltd. According to the particulars on a letterhead, Romero was also a director of this marketing company as at 18 July 1989.

125 After a period of time between July 1989 and May 1990 the following statements appeared in an undated Equivest shareholder newsletter:

"... the future of your company is uncertain. A major restructuring is under consideration ... plans to apply for a listing on the stock exchange must be shelved ... We have enclosed a letter from Mr David Romero, who has given certain shareholders shares in Faldev, a company structured by him."

126 Around May 1990 shareholders in Equivest were informed by Romero that they "are being issued with a corresponding number of ordinary shares in Faldev ... Your Faldev share certificate in this regard is enclosed."

127 (c) **Falcon Developing Capital Limited**

This company was incorporated as a public company on 6 March 1990. As at 1 November 1990 Romero was the Managing Director of Falcon Developing Capital Limited (Faldev) and Eaton (ID No 610804 5105 009) was the Sales and Information Director.

In an undated letter addressed to Equivest shareholders around May 1990, Romero stated: "The main objective of Faldev was to invest in developing companies with good profit and growth potential and to take those companies onto the stock exchange."

- 128 Romero went on and stated in the same letter: "My commitment to you is, that if Faldev is not listed by 31st of December 1991, Investors Forum (Pty) Limited, a company which has close associations with Faldev, endeavours to sell your shares for you at a price of 60 cents or more per share before the 31st of December 1993."

Committee's Note:

It should be noted that this listing on the Johannesburg Stock Exchange did not materialise. During its investigation the Committee found no indication that Investors Forum (Pty) Ltd did indeed sell shares on behalf of shareholders in Faldev as per the above-mentioned commitment.

- 129 The nature of Faldev's business was more fully described in the private placing memorandum for an offer which opened on 1 November 1990 (hereinafter called the November 1990 offer):

"Faldev was formulated for the purpose of developing existing companies. The method of providing working capital to developing companies is based on the American style 'Investment Banking System'. Most growing companies do not have enough collateral to procure loans from financial institutions. But an analysis of profit history, profit forecasts, market analysis and management knowledge can provide an element of security which does not necessarily translate to nett asset worthiness. Faldev advances capital to such companies, and acquires equity for the risk taken. It will also swap its share for the Company into which it has invested in order to acquire further control in that Company. Through its associated companies, such as Falcon and Investors Forum Limited, it will provide the Company with financial services. It will also assist such companies to raise capital specifically for a particular project."

- 130 In the November 1990 offer, Faldev stated that as part of its state of affairs it acquired 25 per cent of Fintronix Holdings Limited (Fintronix). The latter was incorporated in 1989 and it acquired control of Waveform Television Post Production (Pty) Ltd "and the business of Electro Fence CC."

Committee's Note:

Exactly what was meant by the afore-mentioned quoted statement was not clear as records at the Registrar of Companies indicated that the name Electro Fence CC was not entered into the official records. Officially Electro Fence CC did not exist.

- 131 As recorded in paragraph 130, Faldev claimed that it acquired 25 per cent of Fintronix. However, no reference to any entry relating to this investment appeared in either the balance sheet, income statement, cash flow statement or the notes to the financial statements as at 28 February 1991. The only reference to the Fintronix investment appeared in the directors' report attached to the financial statements i.e. 7,5 million Faldev shares were issued at par on 6 March 1990 for the acquisition of Fintronix.

132 It was further stated in the November 1990 offer that as at 31 August 1990, Fintronix produced through its subsidiaries "a turnover of R250 000 per month with a nett profit of R50 000. The Company is expected to grow substantially through 1991."

In the financial statements of Falcon as at 28 February 1991 an entry re the sale of an investment, namely 2 million shares in Fintronix, for R25 000 was reflected. The selling price of R25 000 was identical to the purchase price reflected in the 1990 financial statements.

133 The November 1990 offer by Faldev closed on 15 January 1991. In March 1991 (two months later) Romero and Eaton informed Faldev shareholders that "we have decided to dispose of our interests in Fintronix Holdings Ltd and Incorporated Studios (Pty) Ltd."

Committee's Note:

From the aforecited it is apparent that Fintronix did not perform as expected. Faldev claimed (as recorded in paragraph 130) that it acquired a substantial holding in Fintronix, yet this acquisition was not reflected in the financial statements. The auditors' report about Faldev stated that the financial statements are the responsibility of the company's directors.

On the other hand Falcon claimed (as recorded in paragraph 132) that it sold its holding in Fintronix at the same price it was acquired.

In view of the aforecited the Committee is of the opinion that either the statement about the acquisition of Fintronix in the November 1990 offer by Faldev and/or the financial statements was misleading. Likewise the statement by Faldev of the disposal of Fintronix was misleading.

With regards to the disposal of Incorporated Studios (Pty) Ltd as mentioned in the Faldev letter (as recorded in paragraph 133) addressed to shareholders and dated March 1991, the Committee could find no evidence thereof in the financial statements of either Faldev or Falcon as at 28 February 1991 which could have a bearing on the disposal of this asset.

It was the opinion of the Committee that this situation was also misleading.

134 As at 28 February 1991 the position as to the ordinary shares issued in Faldev was as follows:

On incorporation :	7 ordinary shares at par
6 March 1990 :	14,826 million ordinary shares were issued at par to shareholders of Equivest
:	7,5 million ordinary shares were issued at par for the acquisition of Fintronix.
:	1,5 million ordinary shares were issued at par for the acquisition of Saint Simon (Pty) Ltd.

- 135 15 April 1990 : 500 000 ordinary shares were issued at par for the acquisition of Eldorado Gold Mines (Pty) Ltd.
- 136 During the year : 108 744 ordinary shares were issued to acquire preference shares in Fintronix; these shares were issued at a premium of R25 566.
- : 702 500 ordinary shares were allotted for cash at a premium of R140 493
- : 128 800 ordinary shares were allotted for cash at a premium for R32 199.
- : 45 900 ordinary shares were allotted for cash at par.
- 137 In terms of the company's Articles of Association, for every one ordinary share issued by Faldev, one "A" ordinary share is to be issued at par to Falcon Corporate Finance (Pty) Ltd. In terms of this Falcon received 25,312 million "A" ordinary shares in Faldev.
- 138 In a review of its activities as at 28 February 1991, Faldev stated that it acquired 63,980 million shares in Terra Exploration and Development Limited and that all other investments were disposed of at no loss to the company. The aforementioned shares were acquired at cost for R639 605.

The directors valuation of this investment in Terra was reflected as R47,970 million according to the notes to the financial statements for the period ended 28 February 1991.

- 139 In a newsletter dated August 1991, Faldev requested "shareholders (in Faldev) that have not invested and supported the company to invest a minimum of R500 to benefit from this conversion." The "conversion" had a bearing on a "... Capital Reduction Scheme ... In terms of this scheme all Faldev shareholders will hold shares directly in Terra."

- 140 The following information was presented in the newsletter:

"Consultants will be contacting you to assist you in this matter. Herewith an example of the conversion.

A. FALDEV SHAREHOLDER - (HAS SUPPORTED COMPANY)

10 000 Faldev Ordinary shares issued for no	consideration
<u>2 000 Further Investment (R500)</u>	

Total 12 000 Faldev Ordinary Shares

The shareholder now qualifies for a automatic conversion into Terra and obtains the following:

Issue of 3 840 Terra shares at 50c each.

A further 6 400 Terra shares at 50c to be issued for no consideration from Manresa. (Manresa Investment CC will be recorded in paragraph 168).

A further 6 000 Terra Preference shares at 35c to be issued for no consideration from Manresa.

B. FALDEV SHAREHOLDER (HAS NOT SUPPORTED COMPANY)

10 000 Faldev Ordinary Shares Issued for no consideration

- No further investments

Total 10 000 Faldev Ordinary Shares

Issue of 3 200 Terra shares at 50c each.

From the above you can see that the person that has supported and will support the Company acquires an immediate 120% capital gain, were (sic) the non-supporter will have to wait for the listing to take place for a possible capital growth."

Committee's Note:

The above statement that the supporting investor acquired a 120 per cent capital gain as to the non-supporting investor is as clear as mud to the Committee. No sound method of calculation applied provided the Committee with the answer to the claim made above. Faldev was a concern which held itself out to make profit forecasts and to do market analysis and to render management knowledge, all in the field of financial services. With that in mind the above statement was considered to be not only incorrect but also misleading.

- 141 On 9 March 1992 Faldev declared a dividend *en specie*: For every share held in Faldev one ordinary share in Terra will be distributed. Falcon, by means of its holding of "A" ordinary shares also benefited by this action.

- 142 (d) Investors Forum Limited (sic)

Faldev shares were sold by Investors Forum Limited of which Romero and Eaton were the directors. According to a newsletter dated 10 September 1990, Investors Forum Limited also had "offices in: Investors Forum (Pty) Ltd ... Johannesburg ... (and) ... Investors Forum Natal (Pty) Ltd ... Durban ..." "... we are the official Marketing company for Faldev ..." The shares were offered for sale through private placings.

- 143 On 12 December 1990 Romero in his capacity as director and chairman for Investors Forum Ltd advised a client *inter alia* as follows about various investments totalling

R92 000:

"Investment No. 1

R20 000 in Fintronix on 7/5/90

19% dividends - bi-monthly

01/05/90 - 30/06/90

R 633,33

01/07/90 - 31/08/90

R 653,39

01/09/90 - 31/10/90

R 674,08

01/11/90 - 31/12/90

R 695,43"

Committee's Note

The Committee did not experience any difficulty with the calculations as set out above. However, the following grossly incorrect calculations also appeared in the document: (The correct figures are displayed in brackets).

144 "Investment No. 2

R22 000 in Falcon on 7/5/90

3 months at 25%

R5 500

(R1 375)

Roll over for another 3 months up
to 31/10/90

R5 500

(R1 375)

145 Investment No. 3

R20 000 in Fintronix on 14/05/90

19% dividends - bi-yearly

01/05/90 - 30/10/90

R3 800

(R1 900)

01/11/90 - 31/12/90

R1 266,67

(R 633,33)

146 Investment No. 4

R5 000 = 25 000 Faldev shares

Price increase on 01/11/90 to 25c/share R6 250"

Committee's Note:

With this information available the Committee wants to return to Equivest. As recorded in paragraph 123, Equivest shares were sold at 50 cents per share on 20 April 1989. Around May 1990 Equivest shares could be exchanged for a corresponding number of ordinary shares in Faldev.

This investor was informed that the Faldev shares increased in price to 25 cents per share, therefore it was a sound conclusion that the value then placed on the once promising Equivest shares was less than 25 cents at the time of the exchange.

147 "Investment No. 5

R25 000 loans to Falcon at 25% per 6 months

02/07/90 - 31/12/90 R 6 250 (R3 125)"

As a summary all the earnings plus the capital were added together to arrive at:

"TOTAL INVESTMENT VALUE R122 044,57

ORIGINALLY INVESTED R 92 000,00

Return on investment annualised = 66% per annum"

- 148 This calculation was incorrect in the sense that not all earnings were received over the period of six months beginning at 1 July 1990. Investments No. 1 and No. 2 (Total of R42 000) were made on 7/5/90; Investment No. 3 was made on 14/05/90 and Investment No. 4 "increased" only on 1/11/90.

Committee's Note:

It is the Committee's view that errors of this nature appearing in a formal advice from a concern which name lent it out to be a forum for investors left much to be desired. Such repeatedly incorrect calculations made by persons who led others to believe in their expertise could induce the less informed to participate in a scheme which could be harmful.

A search by the Committee at the Registrar of Companies proved fruitless in respect of the names Investors Forum Limited and Investors Forum Natal (Pty) Ltd. Only Investors Forum (Pty) Ltd with registration number 90/01245/07 was on record. Eaton referred to Investors Forum Ltd in a newsletter called Fintronix News as "a marketing arm for the entire group, (which) specialises in providing a fully comprehensive range of services from financial to investments."

It is the opinion of the Committee that this facade of names of companies which did not officially exist was misleading.

- 149 On 4 November 1992 Romero informed the Committee that Investors Forum (Pty) Ltd was a share selling company for Falcon (sic) and that it operated from 17 May 1990 to 31 October 1990. It sold shares in Faldev to the amount of R150 000.

"At that point, we decided that it was not viable to operate a separate marketing company and decided to incorporate the selling of shares through Falcon."

150 (e) Falcon Corporate Finance (Pty) Ltd

Romero was the managing director of Falcon Corporate Finance (Pty) Ltd (Falcon). From documents made available to the Committee it was established that Falcon acted as transfer secretaries and advisors and rendered services as corporate consultants.

- 151 Falcon was the issuing house for the November 1990 offer for shares in Faldev (refer paragraph 129).
- 152 Falcon claimed *inter alia* that it provided the expertise to set up Fintronix and that R250 000 worth of shares was placed privately. (Fintronix was recorded in paragraph 130 to 133).
- 153 National Quartzite Suppliers (Pty) Ltd (National Quartzite) was a subsidiary of New Era Mines Ltd. The latter in turn was a subsidiary of Hemisphere Mining Ltd of which De Pinna and Harris were directors.
- 154 On 17 April 1990 Falcon purchased National Quartzite for a total consideration of R1 000. At the time of purchase, the company had no assets and was purely a shell. Following a special resolution taken in May 1991, the name of National Quartzite was changed to Terra Exploration and Development Ltd. (National Quartzite will be recorded further under the heading:

Formation of Terra Exploration and Development Ltd, paragraph 170).

- 155 Falcon acted as the transfer secretaries and advisers for Terra on an offer document dated 30 November 1990 with a closing date of 28 February 1991. Terra was prepared to purchase *inter alia* the Hemisphere shares at 100 cents per share, by issuing 4 participating convertible, redeemable, preference shares in Terra for every one share held in Hemisphere. The net asset value per Hemisphere share as per reconstructed balance sheet as at 30 June 1989 was claimed to be 83 cents. (Hemisphere and its subsidiaries i.e. El Dorado and New Era were recorded in paragraphs 18, 29 and 95).
- 156 As Falcon was named as the transfer secretaries and advisers in this particular document, each Hemisphere shareholder had to send a cheque for R50 payable to Falcon to cover transfer and administration costs.
- 157 A similar offer was made to shareholders in Redbark on 30 November 1990 with a closing date of 28 February 1991. The net asset value per Redbark share as per reconstructed balance sheet as at 30 June 1989 was claimed to be 84 cents. (Redbark was recorded in paragraph 35). Falcon was named as the transfer secretaries and advisers in this particular document. To cover transfer and administration costs, each Redbark shareholder had to send a cheque for R50 payable to Falcon.
- 158 Around May 1991, Falcon distributed letters to the shareholders in Transrand Property Consortium Ltd, Transequity Ltd, Transleisure Ltd and First Ladies Investment Ltd whereby shareholders were informed that "the net asset of your shares has deteriorated to dismay values." It was claimed that it could safely be stated that the value was approximately 5 per cent of the original purchase price of the shares.

Falcon claimed to be corporate finance consultants to the aforecited four companies and stated that it had assisted various shareholders in unlisted companies to minimize the losses incorporated in venture capital, therefore it was negotiating with one of its associated companies to take over the shares:

- 159 "In our opinion, you should accept the offers that will be sent to you, because we believe that you will be able to recoup your full investment in the long run. If you retain your shares in the respective companies, you stand a good chance of losing your money completely."

The letter appeared to be signed by Romero. Eaton and Romero were cited as the directors of Falcon.

Committee's Note:

The offer documents attached to the aforecited letter whereby shares could be purchased in Falcon Leisure Holdings Ltd will again be recorded under Falcon Leisure Holdings Ltd. (See paragraph 165).

- 160 Around 11 February 1992 Falcon made written offers to prospective investors to purchase shares in Faldev. The names of these investors were obtained from records held by Selective Portfolio Brokers (Pty) Ltd (Selective), of which Margueritha Jacoba Payne ID No. 511030 0143 007 was the director. According to the records at the Registrar of Companies, Selective was placed under provisional liquidation around November 1991 and finally liquidated around March 1992. From documents available to the Committee it is apparent that Selective was involved *inter alia* in the marketing of shares in The Rooster's Group (SA) Ltd (Rooster's). Particulars of investors in Rooster's were obtained by Falcon and used to market shares in Faldev.
- 161 Around 24 March 1992 Falcon approached existing shareholders in Faldev to participate "in further exciting developments ..." Present holdings of Faldev shares were exchanged for an equal number of Terra shares when a further investment in an equal number of Terra shares at 15 cents each was concluded. Falcon also included the following statement in its letters to Faldev shareholders: "Terra will list in the first quarter of 1992." (Committee's underlining).
- 162 In documents made available to the Committee, Romero briefly explained the role of Falcon in the affairs of Transequity Ltd, First Ladies Investment Ltd, Transrand Property Consortium Ltd and Transleisure Ltd. It was alleged that Falcon was approached during 1991 by one J Sturm for the purpose of making offers to the aforecited companies to consolidate under one umbrella. It was the intention to jointly put in capital and develop the various assets. The documents were prepared by Falcon.

When the SAPS intervened and took all the records, Falcon allegedly withdrew from the offer of consolidation. "Due to the fact that a lot of people had sent in their share certificates we decided to sell them Terra shares from Faldev's holding at a very reduced price."

Committee's Note:

From the aforecited it is apparent that Falcon was very active in the marketing and selling of shares in Faldev, Fintronix, Terra and Falcon Leisure Holdings Ltd. It is also clear that Falcon made use of information obtained from client bases such as those of Transrand Property Consortium Ltd, Transleasure Ltd, Transequity Ltd, First Ladies Investment Ltd and Rooster's.

It should be noted that the sale of Terra shares from Faldev's holding was yet another secondary sale of shares in which case Faldev was the principal beneficiary and not Terra.

163 On 24 July 1992, Falcon changed its name to REF Corporate Finance (Pty) Ltd.

164 (f) REF Corporate Finance (Pty) Ltd

New Company Investments Ltd was delisted from the Johannesburg Stock Exchange on 30 June 1992.

The Committee has reason to believe that REF Marketing, (a division of REF Corporate Finance (Pty) Ltd with Romero and Eaton as the directors) approached shareholders in New Company Investments Ltd around October 1992, informing them that because of their holding in New Company Investments Ltd they were "entitled" either to purchase ordinary shares in Terra at 25 cents each or that they could exchange the shares in New Company Investments Ltd for Terra shares; the exchange was subject to the condition that a number of Terra shares equal to the number of shares that was exchanged had to be purchased at 25 cents per share.

On 22 October 1992 REF Marketing informed an investor that receipt of payment in the amount of R3 625 was confirmed and that "This amount will be used to purchase 29 200 Terra Ordinary Shares at 25c each ..."

Committee's Note:

At this time the Committee points out that R3 625 divided by 29 200 shares is equal to 12,41 cents per share, approximately half the price mentioned in the letter to the investor. The investor was also still in possession of the share certificates issued by New Company Investments Ltd, therefore Terra did not make an exchange of shares. This incident falls in the same category as those where Terra shares were sold at a discounted rate as recorded in paragraph 166.

165 (g) Falcon Leisure Property Holdings Ltd and Falcon Leisure Holdings Ltd

On 22 May 1991, Falcon Leisure Holdings Ltd made an offer to purchase the shares from shareholders in First Ladies Investment Ltd at 35 cents per share, payable by issuing 7 participating convertible redeemable preference shares in Falcon Leisure Holdings Ltd at 5 cents per share. A cheque in the amount of R60 payable to Falcon

Corporate Finance had to accompany each acceptance to cover transfer and administration costs.

- 166 Falcon Leisure Property Holdings Ltd issued a newsletter on 8 January 1992 which was distributed amongst shareholders in, what was called the "Transrand Group of Companies". The following excerpts from the newsletter are self-explanatory:

"As you are aware, we sent out a notification last year stating that the share certificates for Faleisure (sic) will be issued by the end of November ... this has not occurred ... the police had taken all the records, including the share registers of the Transrand Group of Companies ... Without the share registers, we cannot effect the transfer of shares ... the directors of Faleisure have decided to issue your share certificates without effecting transfer of the Transrand Group.

The directors of Faleisure are proud to announce that they have successfully negotiated ... to acquire a large parcel of Terra Exploration and Development Ltd shares ... A further 4 million preference shares have been set aside for the shareholders of Faleisure to acquire at a discounted rate. (Committee's underlining). The shares are selling at 25 cents per share and should list at 50 cents per share. As a Faleisure shareholder, you can purchase the same shares at 12,5 cents per share ... fill in the attached form and send same with a cheque made out to 'Faldev'."

Committee's Note:

From the aforecited and from other documents available, the Committee has reason to believe that similar offers were made to shareholders in Transrand Property Consortium Ltd.

- 167 From the aforecited it is also apparent that "Faleisure" shareholders could purchase Terra preference shares at a 50 per cent "discount" off the "selling" price.

Thirteen months later, on 2 February 1993, F F Marketing, a division of REF Corporate Finance (Pty) Ltd advised a would be shareholder of Faleisure (sic) that the present holding in First Ladies Investment Ltd could be exchanged at no cost for an equal number of Terra ordinary shares but the offer was only valid if another equal number of Terra ordinary shares was purchased at 25 cents per share.

Committee's Note:

The Committee purposefully referred to the above investor as "a would be shareholder of Faleisure." Falcon Leisure Holdings Ltd claimed in the offer document dated 22 May 1991 that the company was registered under number 87/03948/06. As late as 8 January 1992 "Faleisure" sent out newsletters dealing with the matters of share certificates to be issued and obtaining 4 million preference shares in Terra. According to the records at the Registrar of Companies, Falcon Leisure Holdings Ltd was never registered as a company. The number 87/03948/06 displayed on the offer document dated 22 May 1991 did not belong to Falcon Leisure Holdings Ltd but to Vacation World Ltd. According to records at the Registrar of Companies, Falcon

Leisure Property Holdings Ltd was also never registered as a company. Officially both these companies never existed.

Investors were misled into believing that these companies existed and were induced to submit a R60 payment in favour of Falcon "to cover transfer and administration costs".

The Committee has reason to believe that there were some 10 000 shareholders in First Ladies Investment Ltd alone. Theoretically a total payment of R600 000 could be expected from shareholders who believed that they had nothing to lose other than R60.

The Committee has reason to believe that Falcon Leisure Holdings Ltd has never taken management control of the subject companies, therefore no share certificates were issued. The Committee has also reason to believe that the R60 payments taken under the pretences recorded above were not returned. The Committee was not placed in the position to determine the exact amount lost yet again by disillusioned investors.

168 (h) Manresa Investment CC (90/15161/23)

(The name Manresa was recorded previously in paragraph 140).

The close corporation was incorporated on 8 May 1990 and its main objective was given as an investment holding concern. From the official records at the Registrar of Companies it was determined that Romero and associates (sic) were the accounting officials. Romero was the member of the close corporation. He resigned on 14 December 1990 whereafter Eaton became the member.

169 (i) Terra Holdings (Pty) Ltd (92/03109/07)

The company was incorporated on 4 June 1992. From the records at the Registrar of Companies it was established that the object of the concern was that of a holding company. The authorised share capital was 1 000 ordinary shares of R1 each. Romero and Eaton each subscribed for 50 shares and they were also directors of the company. Falcon acted as the secretary for the company.

Following a special resolution dated 6 May 1993 the name of Terra Holdings (Pty) Ltd was changed in the records of the Registrar of Companies on 7 May 1993 to REF Mining Holdings (Pty) Ltd.

3.3 **Formation of Terra Exploration and Development Ltd (69/13549/06)**

170 (a) Main shareholders and the allocation of shares

As explained in paragraph 154, Falcon owned National Quartzite. On 10 May 1991

a special resolution was held to:

- change the name of National Quartzite to Terra Exploration and Development Limited;
- change the company from a private to a public company;
- change the main business and main objects;
- change and subdivide the authorised capital from 4 000 ordinary shares of R1 each to 40 million ordinary par value shares of 0,01 (1/100) of a cent each.

171 According to Romero, Falcon transferred its (ordinary) shareholding in Terra to Faldev and that after the above-mentioned subdivision the issued ordinary share capital of Terra was as follows:

(i)	" 10 000 shares	-	AD Romero
(ii)	10 000 shares	-	C Loftie-Eaton
(iii)	3 980 000 shares	-	Faldev

Due to the fact that a public company must have at least seven shareholders, the following ordinary Terra shares were issued as nominees of Faldev:

(iv)	AD Romero (as nominee)	-	50 000
(v)	C Loftie-Eaton (as nominee)	-	50 000
(vi)	M de Pinna (as nominee)	-	50 000
(vii)	R J Ellis (as nominee)	-	50 000"

172 Additional shares were issued to:

(viii)	Faldev	-	28 million
	and		
(ix)	Manresa (refer paragraph 168)	-	6 million

for certain reasons which were *inter alia* the following:

- To supply future finance to the business of Terra;
- To manage the affairs of Terra;
- To bring out the necessary documentation to acquire the assets of Great African Resources Ltd, New Era Mines Ltd, Redbark Mines Ltd and Hemisphere Mining and Development Ltd;
- Once the above assets were acquired, to apply for the listing of Terra; and

- To eventually bring the mines into production.

173 Ordinary Terra shares were also issued to acquire certain claim licences over, what was described as the

(x) "Eddy Rogers deposits" 1.8 million

Total ordinary Terra shares issued 40 million

174 From written documents provided by Romero the following information about the allocation of shares was obtained:

- On 24 March 1992 a meeting of the directors of Faldev was held to resolve to distribute its interest in Terra. According to the proposed pre-listing document of Terra, Faldev decided to distribute its holding in Terra to the shareholders of Faldev by way of a *dividend in specie*.

175 - On 10 May 1992 a special meeting was held to subdivide the ordinary Terra shares further on a 2:1 basis which resulted in a total of 80 million ordinary shares being issued.

176 - Manresa owned 12 million ordinary Terra shares directly. Of this 12 million ordinary Terra shares, 6 million were issued to De Pinna. The balance of Manresa's holding, i.e. 6 million was transferred to Falcon which brought its allocation to 25 743 900 ordinary shares in Terra. De Pinna was issued with a further 19 743 900 ordinary shares and together with the 6 million from Manresa brought his allocation in this instance to 25 743 900 ordinary Terra shares, equal to that of Falcon.

177 From documents at the disposal of the Committee it was established that De Pinna *inter alia* received 1,5 million shares in Faldev following the takeover of Hemisphere, Great African and New Era by Terra. Since Faldev distributed its holding in ordinary Terra shares by way of a *dividend in specie*, De Pinna obviously received a further handsome number of Terra shares.

178 In the proposed pre-listing statement of Terra dated 28 April 1992 it was stated that the capital structure was as follows:

Authorised share capital:

200 million ordinary par value shares of 0,005 cents each

R10 000

200 million variable rate participating redeemable
convertible non-cumulative preference par value shares

	of 0,01 cents each (Terra preference shares)	<u>R20 000</u>
		<u>R30 000</u>
179	<u>Issued share capital</u>	
	80 million ordinary par value shares of 0,005 cents each	R4 000
	68 345 981 variable rate participating redeemable convertible non-cumulative preference par value shares of 0,01 cents each	<u>R6 835</u>
		<u>R10 835</u>
180	<u>Share premium</u>	
	The (Terra) preference shares have been issued at 25 cents per share, representing a premium of 24,99 cents per share	R17 079 660

Committee's Note:

The above-mentioned statement regarding the premium raised on the Terra preference shares was not correct in all aspects because of the following reasons:

- *In paragraph 166 it was recorded that on 8 January 1992 four million "preference shares" had been set aside for shareholders of Faleisure to acquire at 12,5 cents per share.*
- *In paragraphs 195 and 196 two investors were offered 16 933 and 19 050 "preference" shares at 15 cents per share on 31 March 1992. Payments of R2 539,95 and R2 857,50 were to be made respectively.*

- 181 According to documents at the disposal of the Committee Hindmarch was the sole owner of Anglobel Mining and Exploration (Pty) Ltd (Anglobel). This concern was involved in the mining, processing and blending of coal and the mining of clay and manufacturing of semi face bricks.

Romero explained at a general meeting of shareholders of Terra on 17 August 1992 that Hindmarch owned Anglobel prior to joining Terra. Due to any possible conflict of interest Terra acquired Anglobel from Hindmarch in exchange for the issue of 20 million ordinary Terra shares at 50 cents each.

Committee's Note:

From the aforecited it became apparent that Romero, Eaton, De Pinna and Hindmarch obtained a direct or indirect control over many millions of shares in Terra. As at 28 April 1992 only Eaton and Hindmarch, of the foursome mentioned, were directors of Terra.

182 (b) Minority shareholders: the conversion of composite shares and the marketing of Terra shares

- (i) As early as October 1990, Falcon claimed that it acted as corporate consultants for Terra. On behalf of Terra an offer was made to shareholders in New Era and Great African, and as recorded in paragraphs 155 and 157, also to shareholders in Hemisphere and Redbark with a view to acquire their shares.

The offer comprised the exchange of shares in the aforementioned companies for Terra preference shares. A payment of R50 had to accompany the shares to cover transfer and administration costs.

- 183 From the proposed pre-listing statement of Terra it was determined that a total of 804 shareholders in Great African, New Era, Hemisphere and Redbark participated in the exchange of shares. Shares in Great African were exchanged at the ratio of one Great African share for one Terra preference share. Shares in New Era, Hemisphere and Redbark were exchanged at the ratio of four Terra preference shares for one share in any one of the aforementioned companies.

- 184 The rationale behind the offer to exchange shares in Great African, New Era, Hemisphere and Redbark was "to consolidate the ... companies into one holding company for the purpose of applying for a listing onto the Johannesburg Stock Exchange ..."

- 185 It was further claimed that the purpose of Terra was to acquire mineral rights, perform exploration work on the deposits and either sell the rights to a listed organisation or bring them into account:

"The company's next priority is to develop Yellowbark Mines (Pty) Ltd in which a certain amount of exploration has been done. With further exploration we can establish the viability of establishing a plant ..."

Committee's Note:

The Committee is of the opinion that shareholders in the four companies aforementioned were again induced to pay a further R40 200 (804 shareholders x R50) towards "transfer and administration costs" in order to swop their shares for Terra preference shares.

The motivation behind the share exchange was the alleged potential of Yellowbark with mining assets consisting of notarial mining leases on portion 6 (Witvlakte) of the farm Baing Vley and portion 6 (Graafwater) of the farm Hartebeeskom. Terra acquired Yellowbark through its 54 per cent holding in Redbark.

186 Previously in this report it was recorded that:

- Witvlake Pan (the mineral asset of Yellowbark) was first geologically examined in 1976.
- 187 - In 1978 a joint venture agreement between Yellowbark and Concor was entered into to ascertain the viability of forming a mining company.
- 188 - In January 1989 De Pinna claimed major developments on Witvlake Pan in the Redbark offer. He also stated that the mining company as envisaged above was not formed.
- 189 - In October 1989 De Pinna again claimed major developments on Witvlake Pan and that testing and development were taken place. He also claimed that Concor was finally bought out and Redbark and Reef Nigel became 50/50 joint owners.
- 190 - In October 1990 Falcon claimed that with further exploration the viability of establishing a plant could be pursued.

Committee's Note:

The committee is of the opinion that Romero embroidered on the same alleged valuable asset as De Pinna did in 1984, 1985, 1987 and 1989 when Nafcan and Pingold made offers of sale of shares in Hemisphere and Redbark.

In 1991 the "major developments" appeared to be virtually obliterated by erosion, therefore a plant still not existed and production was not in progress.

- 191 (ii) On 30 November 1990 De Pinna and Harris informed shareholders in New Era, Hemisphere, Redbark and Great African that "because of the continued difficulties in raising funds for the group, it is felt that by combining the assets ... it should strengthen the market potential in raising funds to develop the group's assets ... enhance the possibility of obtaining a Stock Exchange listing of the offeror company, Terra Exploration and Development Limited."

- 192 (iii) Three shareholders in Comprovision Ltd were informed respectively on 16, 17 and 24 January 1992 by a senior consultant of Falcon that their holdings of shares will be exchanged for an equal number of Faldev ordinary shares. (Total 130 500 shares) Further numbers of participating Faldev shares (sic) equal to the holding in Comprovision Ltd were to be purchased at 15 cents each. The senior consultant went on and stated:

"Your holding of ... Faldev shares will automatically qualify you for an equivalent number of Terra shares at no extra cost. 'Terra', J.S.E. listing applied for in December 1991, has a promising future. 'Terra' will list in the first quarter of 1992. Furthermore your Faldev shareholding will have a value of 25c per share."

- 193 (iv) Another shareholder in Comprovision Ltd was likewise informed by a different senior consultant on 12 February 1992. An additional 10 000 ordinary Faldev shares had to be purchased in order to qualify for 20 000 Terra shares at no extra cost (sic).

Committee's Note:

At this point the Committee must point out that a search at the Registrar of Companies revealed that Comprovision Ltd (88/02888/06) was placed in provisional liquidation on 3 December 1991 and in final liquidation on 14 January 1992. Both these dates are prior to the dates of the four offers discussed above.

The "value" placed on these shares with a view to swop it for Faldev ordinary shares is therefore under suspicion and questionable.

- 194 (v) On 16 February 1992 a similar offer was extended to a shareholder of Anroda shares (sic). In this instance the additional number of ordinary shares to be purchased in Faldev amounted to 130 000.
- 195 (vi) On 31 March 1992 a senior consultant of Falcon informed a shareholder of 16 933 Anroda shares (sic) that his holding of Anroda shares was to be exchanged at no cost for Terra preference shares (sic). A further number of 16 933 participating Terra preference shares (sic) had to be purchased at 15 cents each.
- 196 (vii) On 31 March 1992 a senior consultant of Falcon informed a shareholder of Syndicate shares (sic) that his holding of 19 050 Syndicate shares was to be exchanged at no cost for Terra preference shares. A further 19 050 participating Terra preference shares (sic) had to be purchased at 15 cents per share.
- 197 (viii) On 16 March 1992 a senior consultant of Falcon forwarded an offer to a shareholder of TDL shares (sic) to exchange a holding of 4800 TDL shares at no cost for an equal number of Terra shares (sic). A further 4 800 Terra shares (sic) had to be purchased at 25 cents per share.

- 198 (ix) A similar offer was forwarded on the same date to a shareholder of 1 000 Rico shares (sic).

Committee's Note:

In all nine cases recorded in paragraphs 192 to 198, payments were to be made in favour of Faldev. In the first five cases ordinary shares in Faldev were purchased, in cases six and seven, Terra preference shares were purchased. In cases eight and nine "participating Terra shares" were purchased.

- 199 (x) On 27 May 1992 a senior consultant of Falcon informed an investor about an offer to convert a composite portfolio of shares which was allegedly not

performing or dormant, into Terra ordinary shares. The rationale behind the offer was described as follows: "But our offer is based upon our desire to widen our client base, and of course upon listing satisfied clients."

200 The investor was informed that the 56 000 composite shares will be exchanged for an equal number of Terra ordinary shares. A further 56 000 participating Terra ordinary shares had to be purchased for the additional amount of R14 000. The investor decided not to take up the offer. The Committee has reason to believe that because the investor did not pay the additional R14 000, the investor was informed that the original investment comprising of the 56 000 composite shares was now lost. In this instance payment had to be made to Falcon and not to Faldev as was required in the previous cases.

201 (xi) On 18 February 1993 a senior consultant of Terra confirmed to a shareholder of 15 000 Anroda shares (sic) that the holding of Anroda shares was to be exchanged at no cost for 15 000 Terra ordinary shares (sic). A further number of 15 000 participating Terra ordinary shares (sic) had to be purchased at 40 cents each.

202 (xii) From documents made available to the Committee it was established that FF Marketing (a division of REF Corporate Finance (Pty) Ltd of which Romero and Eaton were directors) and REF Marketing (a division of REF Services (Pty) Ltd of which Romero and Eaton were also the directors) made offers around March and July 1993 to shareholders in Rooster's. Shares in the latter company could be exchanged at no cost for an equal number of Terra ordinary shares but the offer was only valid if additional Terra ordinary shares were purchased at 25 cents per share.

203 (xiii) The Committee has reason to believe that similar offers were extended to shareholders in First African Investment Co-operation Ltd (Firstco) with a view to convert their shares in Firstco to Terra.

Romero was a director of Firstco since incorporation on 26 April 1990. Eaton was also a director and Falcon acted as secretary. According to records at the Registrar of Companies, Romero, Eaton and Falcon resigned in 1992.

Committee's Note:

From the aforesaid it is apparent that offers to exchange shares were extended regardless of the value of the shares which were to be exchanged. It is the opinion of the Committee that the client bases and/or the share registers of the various companies were obtained by Falcon. These records were then used to approach, in many cases, disillusioned investors and to lure them with offers of exchanging shares, into purchasing further shares in Faldev and/or Terra.

The Committee would like to point out that the use of the word "participating" by the consultants of Faldev and Terra under the circumstances as recorded in paragraphs 191 to , was interpreted by the Committee to have a bearing on the

scheme of swapping shares and not to have a bearing on participation in profits according to a pre-determined formula.

- 204 (xiv) It was recorded in paragraph 172 that 28 million ordinary shares in Terra were issued to Faldev. In paragraph 174 it was recorded that Faldev decided around March 1992 to distribute its holding in Terra to the shareholders in Faldev by way of a *dividend in specie*. The Committee established that prior to the date when the aforecited dividend came into effect, Faldev commenced selling its holding of shares in Terra from October 1991. The total proceeds received from this sale of Terra ordinary shares amounted to R2,832 million.

Committee's Note:

As this was a secondary sale of shares the proceeds were not destined for the development of Terra, as could be the case in a primary sale.

- 205 From documents made available to the Committee it was established that 47 per cent or R1,338 million of the proceeds of R2,832 million was spent on salaries and commissions. The expenses included R170 000 being the salary paid to Romero. Eaton as the "Sales Director" and five other individuals formed the rest of the personnel. Romero claimed that 80 per cent of their time was devoted to Terra. The balance of 20 per cent was devoted to Mallega Ltd. Total expenses amounted to R1,833 million. Romero claimed that Terra benefited from the sale of shares in the following manner:

Total expenses 80 per cent of R1,833 million:	R1 466 718
Amounts directly deposited into Terra accounts:	<u>R 684 233</u>
Total amount for Terra	<u>R2 150 951</u>

According to Romero R92 206 was spent on furniture purchases, R8 431 or 0,6 per cent was claimed to be money in the bank and 11 per cent or R305 906 was used as a loan to Mallega Ltd.

- 206 From documents available to the Committee it was established that Mallega Ltd "was incorporated as a leisure holding company with the purpose of acquiring high performing assets which yield high returns." Romero and Eaton were directors of Mallega Ltd.

(c) The assets of Terra

- 207 The following is a brief summary of the assets of Terra as claimed in the pre-listing document dated 28 April 1992:

	<u>Vendor</u>	<u>Assets purchased</u>	<u>% Holding</u>	<u>Purchase consideration</u>	<u>Purchase consideration paid by issuing</u>
208	Great African Resources Ltd	309 169 Foston Ltd shares	2%	R 718 750	2 875 000 Terra preference shares

209	La Roc Mining Investments Ltd	72 Diamond claims under claim licence No. L 85360 at Waldecks Plant, district Barkley West	100%	R 1 000 000	4 000 000 Terra preference shares
210	New Era Mines Ltd	2 Shares in Lenmike (Pty) Ltd 100 Shares in El Dorado Gold Mines (Pty) Ltd 20 Prospecting claims namely: 62/88 to 71/88 South Commonage Namaqualand 54/70 to 63/89 South Commonage Namaqualand Loan account of El Dorado Gold Mines (Pty) Ltd - R 2 480 863 Loan account of Greenbark Mines (Pty) Ltd - R 601 815	100% 50% 100% 100%	R 4 000 000	16 000 000 Terra preference shares
211	Redbark Mines Ltd	30 Shares in El Dorado Gold Mines (Pty) Ltd 150 000 Shares in Reef Nigel Exploration Co Ltd Mineral rights of the Farm Louieville, Portion 10 (a portion of portion 1) measuring 702,3526 hectares Prospecting rights: 1731/72 to 1734/72 South Commonage Namaqualand 214/77 South Commonage Namaqualand 874/72 to 875/72 South Commonage Namaqualand 155/72 to 156/75 South Commonage Namaqualand Shares of Greenbark Mines Pty Ltd 77 Shares of Yellowbark Mines (Pty) Ltd 2 Shares of Bluebark Mines (Pty) Ltd	15% 18,5% 100% 50% 100%	R 5 500 000	22 000 000 Terra preference shares
212	E Rogers	270 Feldspar claims in Selati Ranch		R 1 800	1 800 000 Terra ordinary shares
213	Terra Holdings (Pty) Ltd	70 shares in El Dorado Gold Mines (Pty) Ltd	35%	R 5 000 000	By creating a credit loan account in the books of Terra

The following is a review and/or additional information of the aforecited assets:

214 - **Foston shares**

On 31 October 1990 Romero and De Pinna on behalf of Terra and Great African respectively, entered into an agreement whereby the aforecited Foston shares were

purchased. Clause 7 of this agreement reads as follows:

"7. Voetstoots

The Purchaser hereby:

7.1 acknowledges that it has inspected the books and records of the company.

7.2 agrees to and does hereby accept the company and the assets thereof as it stands reflected in said books of account."

215 The Foston Ltd shares were purchased for R718 750 and were paid by issuing 2 875 000 Terra preference shares which meant a price of 25 cents per Terra preference share. ($R718\,750 \div 2\,875\,000$). If the purchase consideration i.e. R718 750 was divided by 309 169 Foston Ltd shares it meant a price of R2,32 per Foston Ltd share.

Committee's Note:

The aforesaid figures were taken from the proposed pre-listing statement of Terra as presented by Falcon dated 28 April 1992. From documents at the disposal of the Committee it was established that the net worth per ordinary Foston Ltd share was nil as at 30 June 1990 i.e. four months prior to the purchase agreement between Terra and Great African. The net earnings per ordinary share was minus 11,9 cents as at 30 June 1991 and minus 3,0 cents as at 30 June 1992.

Foston Ltd was delisted from the JSE on 30 March 1993.

As recorded in paragraph 73 De Pinna and Harris were the directors of Great African, the aforesaid vendor of the Foston Ltd shares.

It is the opinion of the Committee that the inflated consideration for the Foston Ltd shares was unjustified and therefore to the detriment of Terra and its shareholders.

216 - **72 Diamond claims**

The development of the 72 diamond claims under management of La Roc since 1990 was recorded in paragraphs 78 to 94. During 1993 the rights to the claims were transferred to Terra Precious Stones (Pty) Ltd. No development had since taken place.

217 - **Shares in Lenmike (Pty) Ltd (sic)**

Lenmike Investments (Pty) Ltd was incorporated in April 1973. It had an issued share capital of R2 as per the annual financial statements dated 30 June 1991. According to these statements no income statement had been presented as the company had no income. The cash flow statement revealed that the purchase of mining assets amounted to R1 800. The mining assets consisted of 270 Feldspar claims.

- 218 From documents available to the Committee it appeared that Romero, on behalf of Terra, entered into an agreement with one Edward Rogers to purchase with effect from 28 February 1991 "claim licence numbers 38428, 38592 and 38593 consisting of 316 claims on Selati Ranch 143 KT and Thankerton 144 KT and the plant and equipment as detailed..."
- 219 Annexure D to the agreement between Terra and Edward Rogers listed the aforementioned plant and equipment with a value of R323 666. In terms of the agreement the purchase consideration was R1 800. It was further agreed that the purchase consideration was paid by issuance of 1,8 million ordinary Terra shares. (Refer paragraph 173).
- 220 According to the notes to the financial statements of Lenmike Investments (Pty) Ltd as at 30 June 1991, the mining assets were revalued at R50 million by the directors. The comparative figures of the previous financial year as reflected in the financial statements indicated that no value was placed on these assets. It was claimed that the re-valuation was based on "the capitalisation of results calculated by the company's consultant geologist which were estimates of production costs off-set against the basic sale value of the *in-situ* ore reserves."
- 221 According to the proposed pre-listing statement of Terra dated 28 April 1992 the feldspar deposits were prepared for production:
- "Equipment worth R500 000 was purchased for cash during 1991. This equipment will be transported to the mine by August 1992, full production is anticipated by January 1993."
- 222 One year later during July 1993 the feldspar deposit sites were inspected by investigating officers of the Committee accompanied by officials of the Department of Mineral and Energy Affairs. No sign of any recent improvements could be found. Remnants of scrap metal and cement dams which fell into disuse were visible.
- 223 The geologist's report as contained in the proposed listing statement of Terra dated 28 April 1992 stated *inter alia* as follows under the heading: "Methods of Investigation":
- "Numerous outcrops of feldspar-quartz prominence, several old prospect sites and dormant mining excavations were examined... It should be borne in mind that in the absence of drilling exploration data the estimated ore reserves necessarily are speculative and should serve mainly as a guide for more extensive exploration."
- 224 Under the heading "Geology" the geologist stated *inter alia*: "The high cost of production of ground feldspar and transport invalidates feldspar as a commodity to exploit on its own."

- 225 Under the heading "Conclusions" the geologist stated *inter alia*: "The viability of the project depends entirely on obtaining an export market for the larger portion of the produce. High transport costs and limited demand invalidates local markets to sustain production."

Committee's Note:

From the aforesaid it is clear that positive exploration drilling results and finding an export market were essential requirements for the success of the project. The directors gave no indication that these requirements were met. The report by the geologist was dated 20 November 1991. The financial statements as at 30 June 1991 contained an auditors report dated 23 June 1992 with the following qualification:

"We express no opinion on the revaluation of the mining assets as we are not qualified to do so."

In view of the information recorded in paragraph 220 to 225 it is the opinion of the Committee that the viability of the project and the re-valuation of the mining assets as done by the directors were questionable.

- 226 As at the date of financial statements i.e. 30 June 1991 De Pinna and Harris were directors of the company. The said financial statements were approved after the data of the geologist's report by the board of directors on 22 June 1992 at which date Eaton and Hindmarch were directors. De Pinna and Harris resigned on 17 March 1992.
- 227 It was recorded in paragraph 170 that 4 000 ordinary Terra shares were subdivided to par value ordinary shares of 0,01 cent (1/100 of a cent) each. From the aforesaid transaction with Edward Rogers (refer paragraph 219) it is apparent that the ordinary Terra shares were issued at 0,1 cent (1/10 of a cent) each, therefore a share premium of 0,09 cent (9/100 of a cent) was raised on each share.
- 228 From the records of the Registrar of Companies it was established that the name of the company was changed to Eddy Rogers Feldspar (Pty) Ltd on 1 April 1992.

Committee's Note:

Feldspar: Widely distributed white or flesh-red mineral containing aluminium and other silicates in various proportions. (Source: The Concise Oxford dictionary 7th edition).

229 - Shares in El Dorado Gold Mines (Pty) Ltd

The development and potential of this gold mine was recorded in paragraphs 29 to 34.

Around July 1993 the mine was inspected by investigating officers of the Committee. The officers were accompanied by officials of the Department of Mineral and Energy Affairs. No sign of recent improvement or mining activities could be found.

According to the officials of the aforementioned department consent to start with mining activities had to be obtained from the said department after submission of an environmental mining management program. At the time of the inspection at the mine no application to commence with mining activities had been received.

Committee's Note:

The 1989 comparative figures reflected in the schedule of operating income contained in the annual financial statements as at 30 June 1990, showed that income from gold sales for 1989 amounted to R2 930. Income from gold sales in 1990 was reflected as nil.

The notes to the financial statements as at 30 June 1991 stated that the company had no income during the year. This coincided with the observation and conclusion of the investigating officers that the mine was dormant.

It is the opinion of the Committee that the following excerpts from the auditors' report in respect of the 1990 financial statements should be highlighted:

230 "The systems of control over the fixed assets was inadequate for the purpose of our audit and we are unable to formulate an opinion as to the value relating to such assets other than to accept the information and explanation afforded to us by the director ..."

231 "There was insufficient system of control over the expenditure of the company to enable us to place reliance thereon ..."

232 "Because of the nature of capital development expenditure we have been unable to form an opinion as to the value of this asset."

233 "We have been unable to satisfy ourselves that the liabilities of the company have been fully reflected."

The 1990 annual financial statements were approved by De Pinna in his capacity as director on 3 October 1990.

234 The notes to the financial statements for the year ended 30 June 1991 stated that the mining assets were revalued by the directors based on the capitalisation of results calculated by the company's consultant geologist which were estimates of production costs off-set against the basic sale value of the *in-situ* ore reserves. The valuation of the mineral rights over the farm Louieville was increased from R52 943 in 1990 to R28,5 million in 1991.

Committee's Note:

The Committee recorded its opinion on this mine in paragraph 34.

235 According to the records at the Registrar of Companies, De Pinna resigned as a director of El Dorado on 17 March 1992. Eaton and Hindmarch were appointed as directors of El Dorado on 17 March 1992.

236 The financial statements as at 30 June 1991 which contained the re-valuation of the mineral assets were approved and signed by Hindmarch and Eaton on 22 June 1992. The auditors' report which accompanied the statements was dated 23 June 1992. Eaton resigned as a director on 31 January 1993, leaving Hindmarch as the sole director.

237 - **20 Prospecting claims South Commonage Namaqualand**

The prospecting claims as obtained by New Era from Nafcan was recorded in paragraphs 96 and 103.

238 - **Loan account of El Dorado**

- **Loan account of Greenbark Mines (Pty) Ltd**

On 31 October 1990 Romero, on behalf of Terra, and De Pinna on behalf of New Era, entered into an agreement whereby Terra *inter alia* took over the liabilities of New Era namely the loan accounts of El Dorado, Greenbark and Great African. The purchase consideration for the assets less liabilities was the sum of R4 million. Payment was effected by Terra to issue 16 million Terra preference shares at 25 cents per share.

Committee's Note:

According to the financial statements of Redbark dated 30 June 1990, Greenbark was a wholly owned subsidiary of Redbark. Greenbark owned the prospecting rights over certain scheelite deposits in Namaqualand. It was claimed in the directors' report contained in the aforecited financial statements that Greenbark continued to hold its mining claims in Namaqualand; that capital development expenditure of R460 948 incurred in previous years was reflected as an asset in the financial statements although the company has remained inactive.

From the records at the Registrar of Companies it was established that Greenbark Mines (Pty) Ltd changed to Terra Scheelite (Pty) Ltd on 1 April 1992, which in turn changed to Hercules Cacti (Pty) Ltd on 4 October 1995.

239 - **150 000 shares in Reef Nigel Exploration Co Ltd.**

The involvement of Reef Nigel was briefly recorded in paragraphs 40, 82, 83, 84, 88 and 89.

240 - **Mineral rights of the farm Louieville**

These rights were recorded in paragraphs 24, 39, 43, 50 and 100 and must be associated with El Dorado as recorded in paragraphs 29 to 34.

241 - **Prospecting rights on certain claims situated in, what was described as South Commonage, Vioolsdrift Namaqualand**

These rights were the assets of Redbark, recorded in paragraph 35, and its subsidiary companies Greenbark and Bluebark. From statements of financial affairs of Bluebark and Greenbark as far back as 30 June 1984 and 30 June 1986 it was determined that Bluebark and Greenbark were wholly owned subsidiaries of Redbark. The ultimate holding company was Hemisphere, recorded in paragraph 18.

242 - **Yellowbark Mines (Pty) Ltd**

Yellowbark, a subsidiary of Redbark was recorded in paragraphs 19, 20, 41, 42, 45 to 47, 50, 105 to 109, 185 to 190.

The following particulars were taken from a document described as "A summary of the Pan's Geological Data". It appeared that this document dated 2 March 1993 was compiled by Dr I Goldberg, a consulting geologist:

"Yellowbark and its successor Terra had the mining rights on portions of two farms. On the farm Baing Vley the area measured 1 043,0818 hectares and on the farm Hartebeeskom it measured 2 872,5783 hectares. The deed granting the rights was signed on 10 June 1976 and gave the company the exclusive right in perpetuity to prospect and mine all dolcrete, kieselguhr and gypsum, as well as the option to obtain rights on the recovery of other minerals."

Committee's Note:

The Committee has reservations about the given measurements of "the area" as to the measurements of the farms on which "the area" was situated. It was understood from the notarial mining lease No. K560/1976L that the farm Witvlakte measured 1043,0818 hectares and that portion 6 of the farm Hartebeestekom measured 2872,5783 hectares. This matter will again be addressed in the Committee's Note in paragraph 261.

Investigating officers of the Committee accompanied by officials in the employ of the Department of Mineral and Energy Affairs inspected the Witvlakte Pan during July 1993. No major developments or mining activities were noticed. Subsequent to the financial statements for the financial period end 30 June 1991, Yellowbark changed its name to Terra Witvlakte Project (Pty) Ltd (Terra Witvlakte).

243 - **Bluebark Mines (Pty) Ltd**

Bluebark was a subsidiary of Redbark (refer paragraph 50). It was incorporated on 2 April 1973 and the initial share capital was 200 shares of R1 each. De Pinna was one of two subscribers who each held one share. According to the records at the Registrar of Companies, De Pinna became a director on 18 May 1973. Harris became an alternative director on 15 July 1976. De Pinna and Harris resigned on 17 March 1992 and Hindmarch and Eaton were appointed as directors on the same date. Eaton, as director and Falcon, as secretary resigned on 8 February 1993. Hindmarch remained as the sole director. On 2 April 1992 the name of Bluebark was changed to Terra Precious Stones (Pty) Ltd (73/04144/07).

244 - **Eddy Rogers Feldspar (Pty) Ltd**

The involvement of Eddy Rogers Feldspar (Pty) Ltd [previously Lenmike Investments (Pty) Ltd] was recorded in paragraphs 217 to 228.

245 3.4 **Leonard Hindmarch (ID No. 340616 5088 101)**

Romero on behalf of Terra, and Hindmarch, a chartered engineer entered into an agreement on 1 February 1992 whereby the latter was employed by Terra to render services as the managing director with effect from 1 March 1992. According to Romero it was the objective of Hindmarch "to bring the assets of Terra in account."

246 (a) **The assets of Terra and the coal acquisitions.**

Six months after the appointment of Hindmarch, a document dated 10 September 1992 signed by senior consultant Andy Demos and addressed to "Dear Shareholder" was produced. The following valuations based on estimates of ore reserves and production costs off-set against the basic sale value of the *in situ* reserves were shown:

Eddy Rogers Feldspar (Pty) Ltd:

Quartz-Feldspar Leulosomes	R 41,1 million
Mica claims	R125,5 million

Terra Witvlake Project (Pty) Ltd:

Dolcrete	R330,75 million
Kieselghur	R 30,438 million
Kaolin	No valuation set

El Dorado Gold Mines (Pty) Ltd:

Gold	R 95 million
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Terra Precious Stones (Pty) Ltd:

Diamonds	R 4,9 million
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Committee's Note:

The aforementioned figures add up to R627,69 million. This compared well with the figure given by Romero in a document under the heading "To: All Falcon Group Consultants" dated 9 March 1992. The following excerpt was taken from the aforementioned document:

"Dr C B van Niekerk, the geologist of the company, has given a total valuation of the mineral deposits contained in Terra totalling an amount of R626 823 100. Our initial estimation of the value of reserves was R90 000 000, therefore we have decided to apply for a listing at a price of R1,50 per ordinary share and R1 per preference share. This is double the anticipated listing price of the shares which makes Terra a very exciting company..."

247 In June 1993 Romero again informed shareholders in a document with the heading "June Newsletter" about the *in situ* value of the Terra Witvakte Project (Pty) Ltd: "Various geological reports have been compiled, the most recent is Dr Goldberg's report dated March 1993 ... Gypsum R30 million; Dolcrete R750 million; Kaolin R861 million."

From the aforementioned figures it became apparent that irrespective of the other assets the *in situ* value of Terra Witvakte now contributed R1 641 million to the alleged assets of Terra.

248 The aforementioned document dated 10 September 1992 recorded in paragraph 246 made mention of the subsidiaries of Anglobel (refer paragraph 181) i.e. EEC Exports (Pty) Ltd and Molteno Collieries (Pty) Ltd (sic) from which a turnover of R740 000 per month was anticipated. The document ended with the following paragraph: "Our interests are being extended in ascertaining the potential of the Nigerian coal reserves and to introduce the application of South African know-how and machinery."

249 According to Romero it was Hindmarch who started Molteno Collieries (Pty) Ltd and EEC Exports (Pty) Ltd. Hindmarch allegedly entered into a coal sale agreement with Turkey. It was also alleged that a team of experts were sent to Nigeria which resulted in a contract being entered into with the Federal Government of Enugu. Romero claimed that all of the aforementioned were not part of the original aim of Terra.

250 It was recorded in paragraph 181 that Terra acquired Anglobel from Hindmarch in exchange for 20 million ordinary shares in Terra at 50 cents per share. The acquisition of Anglobel was confirmed in the minutes of a general meeting of the shareholders of Terra held on 17 August 1992.

251 In an undated document issued under the signature of Romero between 18 August and 1 November 1992, shareholders were informed of the acquisition of Anglobel with its subsidiaries EEC Exports (Pty) Ltd (EEC Exports), Molteno Collieries (Pty) Ltd (Molteno Collieries) and Gubahoek Anthracite (Pty) Ltd (Gubahoek). Shareholders were informed, that because of a dispute as to the ownership of the anthracite claims in Gubahoek, it was decided to vend in Anglobel into Terra at no consideration until

such time as the dispute was resolved. It was further claimed that the managing director of EEC Exports had returned from a successful trip abroad to procure orders for packaged coal. It was claimed that the plant was nearly complete and that orders should be shipped out by November 1992.

252 The following excerpt was also taken from the undated document recorded in paragraph 251:

"The company required on-going working capital as operating costs amount to approximately R50 000 per month. Falcon has been part financing these costs and the costs of the listing application. The company has 8 000 shareholders and we are requesting a minimum of R500 per shareholder. This would raise R4 million and would be utilised as follows:

To fully capitalise Molteno and to increase plant capacity	R 600 000
To capitalise and bring the Feldspar project into production	R 500 000
To put the Witvlatke project into production	R2 000 000
To provide Terra with 8 months working capital	R 400 000
Commission on the capital raised (if R 4 million is raised)	R 400 000
To pay for the expenses of this offer	R 100 000
	<u>R4 000 000</u>

"Our various mineral deposits with the exception of Eddy Rogers Feldspar (Pty) Ltd are on hold until we have listed. The plant and equipment of Eddy Rogers Feldspar (Pty) Ltd is presently being reconditioned

Various exciting companies have been put in place and already two are in production."

253 Committee's Note:

It is the opinion of the Committee that the only two companies which could be "in production" at that stage were Terra Precious Stones (Pty) Ltd and Molteno Collieries.

(i) *Terra Precious Stones (Pty) Ltd*

The following statement was made in the June 1993 newsletter cited in paragraph 247: "A 27 carat diamond was found on our diamond mine at Waldecks Plant. April's turn-over for diamonds ... is in the region of R250 000."

The claims were visited during July 1993 by investigating officers of the Committee. Mining activities were conducted on site by one Cloete allegedly on a 10 per cent royalty basis in terms of a formal agreement between Terra Precious Stones (Pty) Ltd and Cloete. The view that the diamond claims were virtually exhausted was expressed by Cloete. It was his intention to cancel the aforementioned agreement as end July 1993 unless substantial new findings occurred. No trace of capital equipment owned by Terra Precious Stones

(Pty) Ltd could be found. All equipment in use on site allegedly belonged to Cloete.

The Committee established through the Department of Mineral and Energy Affairs that neither Cloete nor Terra Precious Stones (Pty) Ltd obtained the necessary authority in terms of sections 6 or 9 of the Minerals Act, 1991 (Act 50 of 1991) to develop the claims registered in the name of Terra Precious Stones (Pty) Ltd.

(ii) Molteno Collieries

In documents made available to the Committee it was alleged that around July 1993, EEC Exports and Molteno Collieries were found not viable and were closed down.

The Committee has reason to believe that the shares in Anglobel had not been transferred to Terra following the acquisition of Anglobel as recorded in paragraph 181. The Committee was also led to believe that Hindmarch obtained at no cost 2 million shares in Terra from De Pinna and 2 million shares in Terra from Romero in exchange for 100 per cent of Anglobel to be transferred to Terra. Because of the "breach of contract" by Hindmarch the return of the 4 million Terra shares was demanded. The Committee was led to believe that 2 million of the subject Terra shares were pledged by Hindmarch as security to prevent a sequestration order around December 1992/January 1993.

254 The aforecited undated document recorded in paragraph 251 also made mention of a tender for a coal exporting contract to Turkey. The Committee was put in possession of documents from three different parties who alleged that Terra, and more in particular Hindmarch, falsified tender documents which created the impression that Terra was a substantial coal producer in the Republic of South Africa. Indications were that because of this alleged fraud, Terra did not obtain the tender. The following excerpts from the documents made available to the Committee shed more light on the aforecited incident:

255 "... discovered that Hindmarch ... forged a letter on a Johannesburg Chamber of Commerce letterhead which was subsequently sent to ... agents in Turkey, confirming that Terra was a substantial coal producer in South Africa. This statement was totally untrue and the end user in Turkey checked with the Johannesburg Chamber of Commerce, resulting in the loss of that particular contract."

256 The Committee obtained a document dated 8 February 1993 addressed to the attorneys who represented the Johannesburg Chamber of Commerce. The document was signed by L Hindmarch in the capacity as managing director of Terra. The following excerpt was taken from this letter:

"We are in receipt of your letter ... which relates to a fax that was included in a tender ... The fax caused considerable embarrassment ... please assure your client that you

have received our irrevocable undertaking that we will not tender the fax to anyone nor deal with the document in any manner. We enclose the only photostat copy which we have on file .."

Committee's Note:

Eddy Rogers Feldspar (Pty) Ltd and its assets were recorded in paragraphs 217 to 228.

Terra Witvlake Project (Pty) Ltd and its assets were recorded in paragraph 242.

El Dorado Gold Mines (Pty) Ltd and its assets were recorded in paragraph 229.

Terra Precious Stones (Pty) Ltd was recorded in paragraphs 243 and 253.

257 Hindmarch in his capacity as chairman of Terra issued a News Letter Update dated 13 June 1994 which contained *inter alia* the following statements with regard to the development of the Witvlake Pan.

"LTA Process Engineering ... have confirmed that they would become involved on a 'hands on' basis, i.e. being involved with the engineering, construction, site work and plant management."

258 Committee's Note:

To enable the reader to understand the events hereinafter recorded notice must be taken of the following:

Yellowbark Mines (Pty) Ltd was changed to Terra Witvlake Project (Pty) Ltd (paragraph 242). According to the records at the Registrar of Companies the name of Terra Witvlake was changed to Diatom Filter Minerals (Pty) Ltd on 13 April 1994. Simultaneously on even date the private company was changed to a public company with the name Diatom Filter Minerals Ltd. On 22 April 1994 all shares were changed to no par value. The authorised share capital of Diatom was 200 million ordinary no par value shares.

259 Hindmarch in his capacity as chairman of Diatom issued a newsletter dated 17 October 1994 which again contained *inter alia* the following statements with regard to the development of the Witvlake Pan: "Process Plant ... will be designed, built and operated by LTA Process Engineering from a flow sheet produced by Mintek's Minerals Engineering Division."

260 From documents made available to the Committee it was apparent that, prior to establishing any formal arrangement LTA Process Engineering Ltd (LTA-PE) insisted that Terra established *inter alia* a metallurgical flowsheet and a product marketing plan. Only when such issues had been properly addressed to the satisfaction of LTA-

PE, the latter could make a proposal for providing professional services for the subsequent execution and operation of the venture.

Committee's Note:

The Committee has reason to believe that no such proposal was either requested nor provided at the time of the newsletters. It is the opinion of the Committee that it was again a situation of dropping the name of a well-known and established company to promote the interests of the author of the subject documents. In view of this the aforecited statements about the alleged "hands-on" involvement of LTA-PE was misleading..

- 261 Hindmarch also claimed the following in the aforecited News Letter Update dated 13 June 1994 (paragraph 257):

"The Mintek Report, based on random mineral samples from site is so encouraging that further bulk samples (400 kilograms) will be taken and processed through their plant at Randburg."

From documents made available to the Committee it became apparent that the original analysis results were indeed very encouraging i.e. initial tests produced a diatomite concentrate largely within acceptable limits in terms of composition. However, it should be noted that the results were obtained from a very small sample. Documents made available to the Committee made reference of a sample of 1 kg of diatomaceous earth.

Committee's Note:

It was recorded in paragraph 242 that the mineral deposit on the Witvlake Pan measured a total of 3 915,66 hectares. It is the opinion of the Committee that the results obtained from 1 kg of diatomaceous earth could not be considered to be a reasonable representative sample of a mineral deposit spread over close to 4 000 hectares. In view of the aforecited facts the claim made in the newsletter dated 13 June 1994 was considered misleading. If in fact the area over which the mineral deposit was spread is so small that 1 kg could be considered to be a reasonable representative sample, then the statement contained in the summary of the pan's geological data recorded in paragraph 242 is considered as misleading

- 262 On 14 March 1995, Hindmarch in his capacity as Chairman and CEO of Diatom Filter Minerals Ltd again made mention in a newsletter update of a sample collected at the Witvlake Pan:

"Some 280 pits, at 100 metre distances, have been dug on a grid system. These cover the entire area of the mineral deposit. The machine-dug pits vary in depth from one to two metres, each one has been 'grooved sampled', bagged and logged. They are presently in transit together with 3 tonnes of kieselguhr, for analysis at Mintek's laboratory and process plant."

- 263 From documents made available to the Committee it was established that in order to prove that adequate reserves of a diatomite concentrate were available, thirty small groove samples as well as a single bulk sample were received at Mintek. Only one of the thirty groove samples resembled the original 'road quarry' material recorded in paragraph 261. The remaining groove samples were either barren or of low diatom content (<10%). The results of the mineralogical work done on the bulk sample also showed that this material was essentially barren.

Committee's Note:

The Committee could find no documentation that the negative results obtained from the thirty small groove samples and/or the single bulk sample were disclosed to the shareholders. It is the opinion of the Committee that the exposure given to the collection of the samples and the speculation of what could happen if the results were favourable, were far greater than the exposure, if any, given to the adverse results. Shareholders were therefore deprived of information which was of vital importance in making a balanced decision.

It is the opinion of the Committee that non-disclosure of such important negative facts on the one hand and the accent placed on relatively small and speculative favourable circumstances on the other hand, could present a distorted picture to the average potential investor.

- 264 (b) The selling of Terra shares

The Committee has reason to believe that Payne (refer paragraphs 2 and 160) was actively involved in selling Terra shares, firstly as a salesperson for Romero. Payne allegedly demanded and was paid 25 per cent of the monies raised. It was also alleged that Payne held 500 000 ordinary Terra shares and 396 000 Terra preference shares. Payne then independently engaged Oberholster to sell her shares.

Committee's Note:

The Committee obtained a security transfer form (Form CM 42) indicating that 500 000 ordinary Terra shares were transferred from FCF Securities Ltd to Payne. The consideration in question was stated as R26 000. According to the records at the Registrar of Companies the aforesaid FCF Securities Ltd was not a registered company. The aforesaid transfer form was dated 25 January 1993 and indications were that Romero signed on behalf of the transferor. The aforesaid consideration of R26 000 meant that 500 000 ordinary Terra shares were "sold" at 5 cents per share. The Committee also obtained four other CM 42 transfer forms indicating that Payne sold a total of 174 000 Terra preference shares to members of the public at prices ranging between 10 cents and 13 cents per share. The total consideration as reflected on the four transfer forms amounted to R19 250. The Committee also obtained documents written on REF Marketing (refer paragraph 164) letterheads dated 10 July 1992, indicating that Payne sold ordinary Terra shares to members of the public at 25 cents per share. These documents appeared to be signed by Payne in the capacity as Marketing Director of REF Marketing.

265 The Committee has reason to believe that Payne oversold by about 1 million shares and then approached Hindmarch to cover her oversold position. It was further alleged that Payne then commenced to sell shares for Hindmarch.

266 In documents made available to the Committee it was alleged that from around January 1993 Hindmarch "jeopardised Terra's financial position by having the consultants of Terra sell shares for himself and deposit the funds into the bank account of Combined Services and ceased to pay Terra's accounts. The office rent became overdue and an eviction notice was served." An argument ensued between Hindmarch and Romero and from "... this point Hindmarch refused to co-operate ... and refused to communicate ..."

Committee's Note:

Combined Services will be dealt with again in paragraph 295.

267 (c) The strife among the key players

The Committee has reason to believe that Romero "lost management control of Terra in January 1993." An allegation was made in a document dated 14 February 1994 addressed to the Committee that "... Hindmarch denied any excess (sic) to any documents and enormous feud started between Mr Hindmarch and myself." (Romero).

268 In another document dated 11 August 1994, addressed to the Committee and signed by Romero, the following statements were made:

"1993 was a bad year for Terra. Mr L Hindmarch and myself were fighting. This infighting was initiated by Mr De Pinna ... Mr Hindmarch complained about myself to the Committee ... He further laid complaints to the SAP which resulted in a Police investigation ... I must emphasize that Mr Hindmarch actions were initiated by Mr De Pinna. I believe now that the only reason Mr De Pinna did this was to smoke screen his own activities. ... I decided to approach Mr Hindmarch in December 1993 in an effort to reconcile ... As soon as Mr Hindmarch and myself reconciled our differences, Mrs W Harris turned against us. In the meantime, Mr De Pinna had skipped the country."

269 Hindmarch made no secret about it that he was at loggerheads with the other directors and major role players. In an undated circular letter to Terra shareholders, signed by L Hindmarch in the capacity as managing director of Terra, the following statement appeared:

"Despite an unconstitutional move by Messrs Romero, De Pinna and Harris to add C Loftie-Eaton and W Harris (both under investigation) onto the board of Terra, the fact remains that I am still Managing Director of the company and I oppose both serving as directors of your company."

270 Hindmarch informed shareholders in a News Letter Update dated 21 April 1994 that Harris, through nominee companies, held substantial blocks of shares in Terra. In the same document it was stated that Harris was arrested for alleged fraud and was presently out on bail. It was also claimed that Harris retained the share register and the blank share certificates. It was alleged that Harris refused to release these records and documents and that this action brought the issuing of outstanding shares certificates to a standstill. As late as 19 August 1994 Hindmarch made the following statement in the notice of a general meeting of shareholders in Terra:

"Each shareholder attending the meeting must produce their share certificate as proof of owning shares in the company. The reason for this is due to the fact that the company does not have an updated share register in their possession ..."

271 Hindmarch openly accused the management of Terra that investors' funds were not used to develop the company. The following excerpts were taken from an undated circular letter to Terra shareholders, signed by L Hindmarch in the capacity as managing director of Terra:

"As you are no doubt aware the past nine months have been very traumatic ... I, in particular, was put in a very invidious position. Knowing that you were supporting the company and then discovering that your investment was being diverted into non-Terra projects left me no alternative but to report my findings to the police and co-operate with the Harmful Business Practice Committee" (sic).

"Unlike the past the authorised share selling companies will not have a vested interest in the Terra Group."

"In future all share dealings will be vetted by the Board of Directors who will ensure that the investment will be used for Terra and associated company projects only."

272 The Committee obtained a document dated 2 May 1993 in which it was claimed that Romero, in the name of nominee companies, issued large blocks of Terra shares to himself. The following excerpts were taken from this document which shed more light on what did happen behind the screens:

273 "At the time he (referring to Romero) was a director of Terra together with a Mr C Loftie-Eaton. In the interim various companies with certain mineral deposits were vended into the Terra Ltd company and a large loan account was created in Terra Holdings (refer paragraph 169) of which Romero held a 50 per cent stake. He then resigned as a director and began selling his shares to the public ... The brokers who sold the shares, generally on a commission basis, informed the public (termed as the client base) that the company Terra was to go on to the JSE for a listing and that their investment was to develop the company's mineral rights ... I was promised that Romero would provide R2 million from investors to develop the company and certain coal deposits which I was to bring into Terra. Millions of shares were sold through

Romero's companies, however the largest portion of the monies received went into other of his business ventures i.e. restaurant, casino, time share etc. and only a small percentage into Terra ...

274 I reluctantly signed the June 1991 balance sheets noting that the auditors ... had qualified the value of the various mineral deposits and values. I engaged Dr I Goldberg to look into these values ... He had reservations on the tonnage and values of the various minerals and in fact stated one company as practically worthless.

275 I then started looking into the method of bookkeeping and discovered that Romero was not keeping the books up to date and was not issuing the share certificates to the investors. Some shareholders have waited more than one year for shares. He was not paying the share transfer secretaries ... which complicated the issuing of shares, they refused to do any more work. Romero and his Vereeniging office were continuing to sell shares and pocketing the money.

276 In January 1993 I took away from Romero all bookkeeping and statutory records ... we have discovered immense discrepancies in the work he did and I do not agree his loan account in the Terra Company. ... The millions of shares which he issued to himself having put in no money or mineral deposits. ... Lifting the price of ordinary shares from 0.005 cents to between 10 cents and 25 cents. We have no evaluated records on how this selling price was derived. Selling and not putting the cash into the Terra company for development. Payments disbursed by him for Terra accounts together with charges (work done, rent, etc.) he credited to his loan account in Terra. He then wanted his loan account reverted into shares to enable him to recycle the process of selling more shares ... Romero demanded that I resign as Managing Director which I refused and pointed out that he as a shareholder had no right to demand my resignation..."

277 In another undated letter addressed to "Dear Shareholder", Professor R Kriel (paragraphs 78 and 91) as Chairman of Terra continued with the feud. Hindmarch was accused of sending out an unauthorised newsletter to all shareholders. The Committee believed that the alleged unauthorised newsletter was in fact the undated circular letter recorded in paragraph 269. It was claimed by Prof Kriel that Hindmarch was removed as Managing Director due to the following reasons:

278 - "Hindmarch brought in an application to liquidate the company." (Terra).

279 - "Hindmarch and Dr Goldberg ... joined forces against Terra ... and instructed a Mr Sam Cloete (refer paragraph 253) ... to deposit the funds from the sale of diamonds into Dr Goldberg's personal account ... Dr Goldberg ... kept an amount of R10 000 which was in excess of his salary and then paid Hindmarch ... He in turn kept R15 500 ... Charges have been laid in this matter."

280 - "... Hindmarch and Mr F Harrison of EEC Exports (paragraphs 251 and 253) ... forged a letter on a Johannesburg Chamber of Commerce letterhead ... resulting in the loss of that particular contract. Criminal charges have been

laid by Terra against Hindmarch and Harrison in this matter." (Refer paragraphs 254 to 256).

281 - "... Hindmarch's negligence the Nigerian contracts have not been followed up and we nearly lost our El Dorado Gold Mining Claims..."

282 - "... Hindmarch encumbered the company to the amount of R140 000 by purchasing a BMW 730i for his use ... without authorisation ..."

283 - "While an officer of the company, he was selling his own shares in Terra and the commissions were paid out of Terra's bank account."

284 Prof Kriel also claimed that Principal Securities (Pty) Ltd (paragraphs 3; 59 to 63; 65; 67), FF Marketing and REF Marketing (paragraph 202) were the only authorised marketing companies to sell Terra shares. It was further claimed that International Investments had no authorisation to sell Terra shares.

285 In turn Hindmarch claimed in the News Letter Update of 13 June 1994 that International Investments was the authorised brokers of Terra. From a document dated 8 August 1994 it was established that Oberholster (ID No. 731105 5006 088) (paragraph 264) was the sole proprietor of International Investments.

286 On 19 July 1993 Hindmarch in his capacity as Managing Director of Terra addressed a letter to the Registrar of Companies in which the appointment of Eaton and Harris as directors of Terra was repudiated. Hindmarch alleged that the (then) company secretary and public officer of Terra and himself examined the records at the office of the Registrar of Companies. It was found that a form CM 29 dated 7 May 1993 signed by Professor RG Kriel was submitted to the Registrar of Companies in connection with the aforesaid appointment of Eaton and Harris. Hindmarch claimed that Professor Kriel was a non-executive director and that there was no meeting of the Board of Directors or minutes thereof, authorising such actions. Hindmarch requested the Registrar of Companies to disregard the CM 29 form in question as he regarded it to be a false declaration.

287 Committee's Note

From the aforesaid it became apparent that the key persons were flinging mud at each other whenever the situation allowed it. It is the opinion of the Committee that in this process certain events, which were to the detriment of Terra and its shareholders, were exposed:

288 - *Shares were offered and sold and buyers were not informed that the proceeds were not intended for the development of Terra. It is the opinion of the Committee that these sales could not be considered as secondary sales of shares in the normal line of trading.*

289 - *Shares were sold although the seller could not deliver such shares.*

- 290 - *A complete breakdown in certain very important sections of the administration e.g. the issuing of share certificates and keeping record of such issuance.*
- 291 - *Because of personal differences the management could not fulfil the task for which they were responsible in the first place e.g. to manage and direct the funds entrusted to them.*
- 292 - *Misappropriation of funds entrusted to the management.*
- 293 - *Transfer of shares where the very existence of the transferor and the right, title and interest in such shares were under suspicion and were even queried by the Managing Director of the public company which issued the shares.*
- 294 - *The two opposing groups each made use of their own marketing organisations. Because of the feud, this could only add to the detriment and confusion among shareholders and the breakdown in proper administration of public funds.*

295 (d) The liquidation of Terra

It was recorded in paragraph 278 that Hindmarch brought in an application to liquidate Terra. From records made available to the Committee it was established that Combined Services filed an application for the liquidation of Terra around 25 May 1993. From the aforecited records it was determined that Hindmarch and his wife were partners in Combined Services. (The name of Combined Services was first recorded in paragraph 266).

- 296 It was *inter alia* stated in the relevant affidavit by Hindmarch that De Pinna and Romero effectively controlled Terra and that they were for all practical purposes the major shareholders in Terra through nominee companies. It was further stated that the shares were sold to members of the public by various brokers at whatever prices could be obtained, fluctuating between 10 cents and 25 cents per share and that the proceeds of the sale of the shares were paid to De Pinna and Romero. On occasions that funds were made available to Terra it was done by way of loan capital. On or about 18 January 1993 Hindmarch advised De Pinna and Romero that Terra was experiencing acute cash flow problems. It was also claimed that the financial books had not been written up to date and that much of the statutory work was incomplete and fragmented. A substantial number of discrepancies were allegedly discovered and reported to the South African Police Services. Hindmarch also claimed that the approach by Romero and De Pinna to procure money from the public was "highly suspect, ... substantially misleading if not fraudulent." (Paragraph 9, page 13 of the relevant affidavit by Hindmarch).

- 297 Hindmarch also stated that pursuant to a report from a geologist named as Dr Goldberg, it would appear that the valuation placed on the mineral rights of Terra by De Pinna and Romero were substantially over valued, that their worth was doubtful and uncertain. Hindmarch further claimed that Terra was indebted to EEC Exports (refer paragraphs 248 to 251) to the amount of R62 613,57. It was also claimed that Terra owed Hindmarch the sum of R102 232,43 as at 15 May 1993. Hindmarch

indicated to Romero that his rendering of services would not continue. It was also stated that the sole source of income was derived from an alluvial diamond deposit near Barkly West which gave an uncertain monthly income of approximately R25 000 per month. The current running expenses of Terra were claimed to be in the order of R45 000 per month, resulting in an operating loss of approximately R20 000 per month.

298 In the answering affidavit (page 54 of the document) by Romero it was *inter alia* stated that during April 1992 "a consulting geologist Dr C B van Niekerk prepared a report dealing with the values of the reserves belonging to certain of the subsidiaries in the Terra Group. This report was prepared to be taken up in the pre-listing statement of the respondent (Terra) for the purposes of its application for a listing on the Johannesburg Stock Exchange."

299 The Committee obtained a document with the title "Replying Affidavit" in which the aforecited answering affidavit by Romero was addressed point by point. The Committee has reason to believe that this document was prepared by Hindmarch. The following excerpt was taken from (page 29 paragraph 29.2) this document:

"Dr C B van Niekerk never visited Witvlake. The report Dr I Goldberg and Hindmarch were led to believe was authentically compiled by Van Niekerk, was in fact based on information provided by De Pinna. When they were made aware of this by Van Niekerk it was decided that Dr Goldberg should make a trip to the site in a remote part of the Western Cape. I met Dr Goldberg in Cape Town, he was very despondent, not so much of what he had found, but how he had been misled by the De Pinna/Van Niekerk report on which he had based (at my request) his report. Shortly after our return to Johannesburg Dr Goldberg resigned as a Director of the Terra Group. He lost all confidence in any of the reports which had been prepared by Van Niekerk and would only, in future, put his name to properly drilled geological reports which he alone would supervise. The Respondent (Terra) did not have the funding for such reports ..."

300 The Committee has reason to believe that De Pinna and Romero were in the USA attempting to raise capital for Terra when Hindmarch brought in the application to liquidate Terra. Romero returned urgently and succeeded in opposing the application.

301 Committee's Note:

Throughout this report the sales of shares were justified by the sellers because of the alleged enormous potential locked up in mineral deposits of Yellowbark (paragraphs 105 to 109) which became Terra Witvlake Projects (Pty) Ltd (paragraph 242) and which eventually became Diatom Filter Minerals Ltd (paragraph 258). Now it was alleged that one expert in the geological field lost all confidence in the reports of a colleague and would only put his name to properly drilled geological reports.

- 302 *It was recorded in paragraph 46 that Dr Goldberg stated that drilling on a grid-basis was deemed warranted. The Committee summarised the (then) prevailing situation in paragraphs 186 to 190.*

In July 1993 the Witvakte Pan was inspected by investigating officers of the Committee accompanied by officials of the Department of Mineral and Energy Affairs.

No sign of capital improvements could be found. The Committee was led to believe that the mining rights were held by way of a notarial mining lease granted to Yellowbark by one Mr Van Zyl, the farmer on the land. According to Mr Van Zyl very little exploration had been done.

- 303 *This information corresponded with the information obtained from the records held by the Regional Director Western Cape of the Department of Mineral and Energy Affairs. From documents obtained from the said Department it appeared that Diatom did file an application for a permit on 3 May 1995 to proceed with mining activities but because of certain outstanding documents the application was still not finalised as at 12 February 1996.*

- 304 *To conclude, the following excerpt was taken from correspondence addressed to the Committee by Dr Goldberg dated 23 August 1993:*

"As regards Terra, they had no right to use a report written by me without my approval. The report quoted was meant for internal purposes only."

- 305 *In view of the aforecited it is the opinion of the Committee that the proverbial bottom of the alleged asset in the form of the Witvakte Pan had now finally dropped out.*

- 306 (e) Diatom Filter Minerals Ltd (73/05422/06)

Hindmarch announced in a Terra News Letter Update of 13 June 1994 that Terra Witvakte (refer paragraph 242) had been changed to Diatom Filter Minerals Ltd. From records at the Registrar of Companies it was established that the authorised share capital consisted of 200 million ordinary shares of no par value. Hindmarch was appointed as director on 17 March 1992.

- 307 *In a Terra News Letter Update of 21 April 1994 Hindmarch elaborated as follows about Diatom:*

"The share capital has been increased, share certificates are being printed and will be issued immediately they are received from the printers. REF Services (Pty) Ltd are one of the two marketing agents for Diatom."

- 308 *Hindmarch revealed the following plan of action in the aforecited news update of*

21 April 1994:

"... Overseas Mining Ltd. This company is purchasing the JSE listed shell company which will be known as Overseas Mining and Exploration Ltd." (Committee's underlining).

309 "Overseas Mining and Exploration (Ltd) will then purchase Diatom from Terra which will result in the Terra Shareholders receiving shares in the listed company."

310 "Shareholders who have not received their Terra Shares and/or would prefer Overseas Mining Ltd shares in their stead can do so through the Company's authorised brokers International Investments."

311 In a newsletter dated 17 October 1994 Hindmarch in his capacity as chairman for Diatom claimed that a cash flow/profit forecast had been compiled on a technical and marketing basis. Hindmarch claimed that the healthy positive cash flow position endorsed the decision of the Board of Directors to apply for a listing of the company on the JSE with immediate effect. Hindmarch ended off by making the following statement:

"The most recent visit to site confirmed that all infrastructure runs just six kilometres from the perimeter of the pan thus enabling this most exciting project to start."

312 Committee's Note:

(i) *From the aforecited it was apparent that REF Services (Pty) Ltd (Romero and Eaton, refer paragraph 202) and International Investments (Oberholster, refer paragraph 285) were the two marketing agents referred to in paragraph 307. However, in a News Letter Update of 13 June 1994 Hindmarch narrowed this down and claimed that International Investments was the authorised brokers:*

"For your own safety please do not deal through any other individual or organisation."

313 (ii) *It was recorded in paragraph 311 that as at October 1994, Hindmarch claimed that important infrastructures were in place at the Witvlake Pan, thus enabling the project to start. In paragraph 303 it was recorded that the application to start with mining activities was not finalised as at 12 February 1996.*

The Committee has reason to believe that as at the aforecited date, i.e. 16 months later, still no mining activities were in progress at the particular site.

314 The Committee was led to believe that Oberholster as sole proprietor of International Investments, the "authorised brokers", extended offers to members of the public to purchase shares in Diatom. In a letter dated 12 April 1994 Oberholster claimed that Diatom "... will be linked to a JSE listing."

- 315 From the aforecited letter it was apparent that a minimum amount of R2 500 was required to purchase a block of 50 000 shares in Diatom. It was stated that the offer was for selected Terra shareholders only. The purpose of the sale of shares in Diatom is contained in the following excerpt from the aforecited letter:

"To bring you up to date with developments your investment will assist in the purchase of a JSE listed Shell company which will be in the Mining and Exploration section. The name of the company will be Overseas Mining and Exploration Ltd."

- 316 It was further claimed that Diatom will be the first company to be reversed into the listed company. As to the assets of Diatom, the following statement was made: "A conservative estimation of the mineral asset value of Diatom is R200 million."

- 317 Committee's Note:

It was recorded in paragraph 247 that the in situ value of the mineral deposits of Diatom was estimated at R1 641 million. In view of the controversies surrounding the geological reports the Committee was not in a position to comment on the alleged conservative estimation as claimed by Oberholster. However, from the aforecited it was apparent that the client base of Terra was now used to market the shares in Diatom.

- 318 It was recorded in paragraph 315 that Diatom shares were offered at R2 500 per block of 50 000 shares i.e. 5 cents per share on 12 April 1994. A similar offer was extended on 18 October 1994 except that now no mention was made that the offer was for selected Terra shareholders only as was the case with the previous offer. The following excerpts were taken from the covering letter dated 18 October 1994:

"It is very encouraging to see that Diatom Filter Minerals Limited is now ready to be listed on the JSE. That is why we are offering a final option to purchase blocks of shares in Diatom ..."

- 319 Seven months later on 24 May 1995 Oberholster offered the same shares in blocks of 25 000 shares at R2 500 i.e. 10 cents per share. The following excerpt was taken from the covering letter dated 24 May 1995 and attached to the share application form: "Our anticipated listing price is 50 cents per share, which is a very conservative and realistic figure."

- 320 Attached to the aforecited share application form of 24 May 1995 was also a cash flow and profit forecast as at 3 April 1995. Kieselguhr, dolcrete and gypsum were mentioned as the three minerals to be mined and processed. According to the forecast 40 000 tons of minerals will be mined after one year, the total sales figure will amount to R15,975 million and the cumulative cash flow will amount to R10,716 million. According to the forecast the operational expenses per ton i.e. Opencast mining; Processing plant; Bagging plant and Transport will remain static over the forecast period of 5 years.

321 Committee's Note:

It was recorded in paragraphs 315 and 318 that Diatom shares were offered for sale at 5 cents per share. In October 1994 Hindmarch claimed that infrastructures were in place (paragraph 311).

In April 1995 a profit forecast saw the light and in May 1995 the shares doubled in price. In February 1996 the necessary documentation to start with mining activities was still not in order and according to the Department of Mineral and Energy Affairs no mining activities were in progress.

The Committee was not in a position to establish a sound reason as to why the price of Diatom shares doubled in the period of one year seen against the background that no plant development, no production and no earnings were achieved.

322 (f) Overseas Mining (Pty) Ltd (89/03913/07)

The company was incorporated on 6 July 1989. From records at the Registrar of Companies it was established that the main business and object of the company were mining and quarrying. The authorised share capital was R1 000 divided into 1 000 ordinary par value shares of R1 each. Hindmarch was appointed as a director on 15 September 1989. On 22 April 1994 the company was changed into a public company called Overseas Mining Ltd.

323 (g) Overseas Mining Ltd (89/03913/06)

From the records at the Registrar of Companies it was determined that the authorised share capital of the company shall be 500 million ordinary no par value shares. This figure included the 50 million shares issued previously for a consideration of R100.

324 Hindmarch elaborated as follows about Overseas in a Terra News Letter Update of 13 June 1994: "... this company will buy a suitable JSE company which will be structured to acquire companies and mineral assets generally compatible with the Mining and Exploration Section of the JSE ..."

325 In an undated document addressed to "Dear Terra Shareholder" Oberholster informed the shareholders as follows "... the share certificates you are currently holding are not viable for trading, now or at any later stage ... As a Terra shareholder, you will receive on a one for one basis Overseas Mining Limited shares which are acceptable ... Everything always revolves around costs, however in this instance we do not require a further investment, but merely R500 (Five Hundred Rand) that will cover stamp duties, share certificates, transfer duties, postage and all other administration fees and certain developments etc..."

326 In a different document addressed to "Dear Shareholder" and dated 8 August 1994, Oberholster acknowledged receipt of the R500 payment and continued as follows:

"Your Overseas Mining share certificates will be forwarded to you as soon as we receive your original Terra Exploration and Development share certificates or share certificates of any subsidiary company linked to Terra. If you are not in possession of any share certificates a proof of payment will be sufficient."

327 Committee's Note:

It was recorded in paragraph 252 that Terra had approximately 8 000 shareholders. The shareholders were now informed that their holding in Terra was "... not viable for trading, not now or at any later stage ..." Suddenly all the excitement about Terra had fizzled out. But again there was a "rescue" operation which would cost the disillusioned shareholder in Terra [or "any subsidiary company linked to Terra" i.e. New Era, Great African, Hemisphere and Redbark (refer paragraph 182); Comprovision Ltd (paragraphs 192 and 193); Anroda (paragraphs 194 and 195); Syndicate (paragraph 196); TDL (paragraph 197); Rico (paragraph 198); Rooster's (paragraph 202) and Firstco (paragraph)] only R500.

Theoretically a total payment of R4 million (8 000 shareholders x R500) could be expected from shareholders who believed that they again had nothing more to lose other than R500.

328 On 18 October 1994 Overseas issued its first newsletter. The newsletter was signed by Hindmarch in the capacity as Chairman for Overseas.

It was claimed that since the "... last Terra Newsletter dated 13 June 1994 some 25 million ordinary shares and 15 million preferential shares have been converted to 40 million ordinary shares in Overseas Mining Ltd. This, in effect, gives Overseas Mining a controlling interest in Terra and its subsidiary companies.

329 ... Due to the support which we have received over the past few months we have paid for the continuing development of the Witvlake Pan Project and the payment of the mineral leases on the Eldorado (sic) Gold Mine claims until July 1995.

330 ... The day-to-day office running costs are being met together with the payment of some old Terra creditors. The most pressing expense has been the legal costs.

331 ... The Terra name and share certificates are, to all intents and purposes, defunct. Overseas Mining Ltd feels, however, that the mineral deposits are worthy of support hence our involvement which now exceeds R300 000.

332 ... Our plans to support a JSE listing have not wavered. We therefore suggest you give serious thought to converting your Terra shares, either ords or prefs, into Overseas Mining Ltd ordinary shares on a one to one basis."

333 On 22 November 1994 Hindmarch informed the Committee that a number of Terra shareholders had exchanged their Terra shares for shares in Overseas. Hindmarch gave the following particulars as at the aforecited date:

"316 who have paid R500	R158 000
2 who have paid R300	R 600
6 who have paid R250	R 1 500
2 who have paid R200	R 400
1 who has paid R 25	R 25
1 who has paid R 20	R 20
Approximately 30 who have not paid at all	R -
	<u>R160 545</u>

334 ... I am pleased at the response and it has enabled me to pay old Terra creditors, pay legal and audit fees in advance, reverse the liquidator's order, and develop the two mineral assets, namely the Witvlake Pan and the Barberton Gold claims. (Committee's underlining).

... it is envisaged that a general meeting of shareholders will be held on 17th January 1995."

335 Committee's Note:

The most recent position as to the development of the Witvlake Pan as established by the Committee was recorded in paragraph 320. As far as the development on the Barberton gold claims was concerned, the Committee again obtained particulars from the Department of Mineral and Energy Affairs during February 1996.

The Committee was informed that the claims were again inspected on 14 February 1996 by officials of the aforementioned department. No signs of recent development was noticed and the opinion was expressed by the officials that no development took place over the last five years.

336 On 22 March 1995 Hindmarch, in the capacity as chairman of Overseas issued a document addressed to "Dear Shareholder" from which the following excerpts were taken:

"We have been in receipt of your letter for some considerable time ... we have not had the opportunity to reply in a positive manner until now. This was mainly due to a liquidation attempt which we successfully rescinded and, at a subsequent General Meeting of Terra Shareholders, two resolutions were unanimously (sic) passed ...:

(a) ... Hindmarch be authorised to sign all documents necessary to facilitate the listing of Diatom ...

(b) ... the Company (referring to Terra) dispose of all its holdings in Diatom Filter Minerals Ltd to Overseas Mining Ltd for the consideration of R7 600 000 that will be satisfied by the issue of

152 000 000 ordinary shares in the share capital of Overseas Mining

337 Committee's Note:

It now appeared that Terra had reached the end of the line:

- (i) *Overseas had the controlling interest in Terra and its subsidiary companies. (Paragraph 328).*
- (ii) *The Terra name and share certificates were to all intents and purposes defunct. (Paragraph 331).*
- (iii) *Terra had to dispose of all its holdings in Diatom. (Paragraph 336).*
- (iv) *Terra shares could be exchanged for shares in Diatom against a payment of R500.*

338 On 5 June 1995 Hindmarch in the capacity as chairman of Overseas issued a News Letter Update in which the following claims were made:

"Diatom Filter Minerals Ltd

The pre-listing statement is now completed. Pro-forma Balance sheets are with the auditors together with cash flow projections for five years operation. This has been compiled from the results of an extensive geological report costing approximately R100 000. A joint venture agreement has been signed with Mintek and work is proceeding on the sampling of the minerals transported from the Witvlake Pan. Negotiations are underway to reverse Diatom into an operating Company presently listed on the JSE ... The listing of Diatom will make the Overseas Mining shares quite powerful and will create a platform for sustained growth and expansion ... "

"Eldorado Gold Mines (Pty) Ltd

There is considerable mining activity in the Barberton area where we have our claims. Our geologist is busy re-assessing the value of the claims we hold together with adjoining claims which would make a mining operation viable. Quite an amount of geological work still has to be done.

339 It was recorded in paragraph 164 that shareholders in New Company Investments Ltd (NCI) were informed by REF Marketing (Romero and Eaton) around October 1992 that they were "entitled" to purchase shares in Terra. On 14 August 1995 International Investments, the so-called authorised brokers for Diatom (paragraph 312) informed a shareholder in NCI that "... your NCI shares ... be exchanged on a one-to-one basis into Overseas Mining Ltd for only 10% (ten per cent) of your actual shareholding. For example: Should you hold 10 000 NCI shares, your cost is R1 000 (one thousand rand) and you receive the equivalent amount of shares in Overseas

Mining Ltd ... The above example indicates the possibilities and being an NCI shareholder, you qualify for this share exchange. This is not a conversion. You can also exchange portions of your initial capital outlay. (Committee's underlining). We expect Overseas Mining to be ready for listing in approximately eight months time."

340 Committee's Note:

- (i) *In respect of the intended listings of Diatom and Overseas the Committee established as recent as 28 March 1996 that no Pre-listing Statements had been received by the Listings Division of the JSE.*
- 341 (ii) *The claim that a joint venture agreement had been signed with Mintek appeared to be devoid of all truth. An agreement was indeed signed by Mintek and Diatom Filter Minerals Ltd on 25 April 1995 whereby it was agreed inter alia that Diatom Filter Minerals Ltd will provide Mintek with approximately 30 samples of ore from Witvlake Pan so that Mintek could assess the quality and the diatomite content of the ore. It was a specific condition of the agreement that no joint venture shall be deemed to exist between the parties. In fact, the only relationship between the parties shall be that of independent contractors.*
- 342 (iii) *The reason as to why NCI shareholders were "entitled" in 1992 to purchase Terra or "qualified" in 1995 to "exchange" NCI shares for shares in Overseas remained a mystery to the Committee. It is the opinion of the Committee that the particulars of NCI shareholders were used as a so-called client base purely with a view to sell shares in Overseas and that the alleged entitlement and qualification were just calculated choices of words to induce shareholders in NCI to part with more money.*

4. **EVALUATION OF THE BUSINESS PRACTICES**

- 343 As early as October 1975 Nafcan offered an unknown number of shares in new Era for sale. On several other occasions recorded in the report, shares in different public companies were made available for sale by private companies, private individuals and public companies. In many instances use was made of the services of brokers. In more than one instance the key figure behind the broker front had a vested interest in the selling of the shares.
- 344 In many cases recorded in the report the subsequent sales which took place were secondary sales. The proceeds of these sales were not destined for the development of the public company in which the shares were bought or its assets. The companies requiring the funds had to depend on loans from the directors or from other sources.
- 345 The funds appeared to have flowed to De Pinna, Harris, Principal, Romero, Falcon, Hindmarch and others. The developing companies concerned were starved for funds. Substantial loan accounts were created for whatever funds were advanced to the companies.

- 346 The same underlying assets of dubious recoverable value at uncertain exploration costs formed the basis for a series of investment invitations to the public. In fact it appeared that the credibility of some geological reports on which the valuations of the mineral deposits were based was doubted by an expert in the particular field.
- 347 Potential investors were led to believe that by investing in the shares offered to them they would contribute to the development of the various mineral assets held by the developing companies. Investors were also led to believe that their investments would substantially increase in value once the company in which the shares were bought was listed on the JSE. By impressing the listing of these companies, expectations were created with investors that their investments would substantially enhance their income. With the exception of the effort to list Terra on the JSE, all other talk in this direction appeared to be empty speculations purely to promote the sale of shares.
- 348 Existing shareholders were periodically enticed to exchange or convert shares in older failing companies. The successor companies were however based on the assets of what became defunct entities. In most cases the shareholders had to pay a conversion fee. Claims that the additional payments were to meet administration costs, transfer fees, stamp duties, postage and handling fees were hackneyed phrases. In fact the Committee found in one case that the successor company officially did not exist therefore transfer/conversion of shares into such a company could not take place.
- 349 Shareholders were provided with financial information about the companies and astronomical valuations of mining rights which were extensively qualified.
- 350 Documents presented to potential investors in several instances contained incorrect information. Potential investors were either ill-informed or bombarded with information which in several cases amounted to deliberate deception.
- 351 The well developed technique to deliberately drop the name of a large well-known mining group; or the name of an organisation which was known for its particular expertise; or the name of a mine which was a self-sufficient, well-run, income generating entity, in a sentence so as to create an impression that the reader might share in a similar benefit or prosperity, appeared regularly in marketing material. Claims of hand-on situations and joint venture agreements entered into were other elements of such deception. The Committee is also of the opinion that the unsubstantiated representations and deliberate omissions on the part of De Pinna, Harris, Romero and Hindmarch in newsletters and newsletter updates were misleading.
- 352 The optimism of the promoters was not justified by their own intimate knowledge of the poor track record and performance of the companies. The substantial qualifications and assumptions affecting the valuations, in addition to knowledge of prior poor growth performance, should have induced all those involved to have marketed the investments much more conservatively. The mere inclusion of hedging or qualifying statements could not be deemed sufficient to have alerted prospective investors to the perilous state of affairs of these companies and the high degree of risk inherent in these investments. Their own lack of managerial ability should have restrained the confidence of the promoters. In this respect the Committee also took

into account the role played by Oberholster as a broker. As the schemes developed Oberholster became more and more prominent until in August 1994 he blossomed out as the sole proprietor of the so-called authorised broker.

- 353 The following are excerpts from a few letters received from complainants in the course of the investigation:

Hemisphere: "... were bought in 1984 when I was phoned by a silver-tongued nice lady from Principal Mining ... who promised that these shares would shortly be listed ..."

- 354 Prinmin: "In 1987 I was approached ... to buy Redbark Shares which were about to be listed and would subsequently rise in value ..."

- 355 La Roc: "... my genader het in verband met La Roc Mining. Die wortel voor my was 10% rente maandelikse kontant op wat ek belê ... Die rente was in kontant aan my uitbetaal vir ongeveer 4 maande waarna die fontein opgedroog het ..."

- 356 Lockhaven Enterprises:

"Ek het ... R30 000 ... belê. Hulle het my 'n tjek vir R42 000 gegee ... Die tjek het terug gekom 'Rekening gesluit' ... Nog niks aan die saak gedoen om my te betaal nie."

- 357 Principal: "Sedertdien het ek op verskillende geleenthede telefonies met amptenare van Principal Securities in verbinding getree. Verskonings is gemaak, beloftes gegee dat hierdie aangeleentheid dringend aandag sal geniet. Tot op datum het ek nog nie die aandeelsertifikate ontvang nie."

- 358 Mallega Ltd: "They closed (their offices) without notifying us as their clients, so we were left frustrated. I have tried on several occasions to correspond with them in Johannesburg, but they do not respond."

- 359 Faldev: "Volgens die dokument sou Faldev voor of gedurende November 1991 amptelik genoteer word en beleggers word nou die geleentheid gebied om aandele voor notering teen 'n laer prys te koop."

- 360 F F Marketing:

"I was persuaded to purchase shares, preference and debentures, in Mallega ... Now despite many attempts to contact Dave Romero, both telephonically and by fax, no reply has been forthcoming ... My father ... a pensioner has also invested his little hard earned capital in Terra and Mallega, with the same results."

361 Falcon: "It is our view that our client stands to lose the R92 000 plus all the interest from 1990 to date as Messrs Romero and Loftie-Eaton are both avoiding our client and avoiding payment."

362 REF Marketing:
"I am still waiting for share certificates pertaining to 18 000 shares in Terra."

363 Terra: "... from Equivest to Faldev to Terra with intermittent promises to go public ... I call myself a ripped off pensioner ..."

364 Terra: "I was telephoned from Johannesburg by an excited salesman from Falcon who said Terra was about to be listed and offered me 16 000 shares at a low pre-listing price ..."

365 Terra: "Ek is deur 'n mnr Charles Oberholzer genader om geld te waag in Terra ... Ek het een sertifikaat ... vir 30 000 teen R3 750 ontvang. Een van 40 000 is uitstaande waarvoor ek R5 000 betaal het ..."

366 Terra: "Ons het ook dokumentasie vir die notering van die aandele op die Johannesburgse Effektebeurs ontvang Die Familietrust skade uit hierdie transaksie beloop ongeveer R 300 000."

367 Funds spent towards the actual development of the various assets appeared to be minimal. Two investigating officers of the Committee, accompanied by officials of the Department of Mineral and Energy Affairs who were familiar with mining records and events of the particular areas, visited the Witvakte Pan, El Dorado, Waldeck's Plant, Eddy Rogers feldspar and mica mines. No evidence was found of any recent tangible investment of funds in providing an infrastructure at the various sites to bring the mineral deposits to economic fruition. Evidence of meaningful exploration work or the development of any infrastructure could not be found at the Witvakte project. The El Dorado gold mine near Barberton and the Eddy Rogers feldspar and mica mines near Gravelotte were dormant and derelict, again with virtually no signs of development. The small diamond mine at Waldeck's Plant near Barkly West was operated by a lessee and Terra derived only a limited income from marginal royalty payments by the lessee.

368 New acquisitions into the coal mining industry and associated concerns were described by Romero as not being part of the original aim of Terra. These ventures appeared to fizzle out soon after the acquisitions. In fact it appeared that a major forgery attempt was necessary to get such ventures off the ground.

369 The Committee concluded that no mining activity was imminent in any of the Terra or Overseas undertakings. It appeared that there was always a lack of development funds. In fact the Committee could find no reasonable grounds in the documents presented that the minerals in the various deposits could be extracted and developed into a viable undertaking under the present economic circumstances.

- 370 It was consequently the opinion of the Committee that De Pinna, Harris, Romero, Eaton, Hindmarch and Oberholster should not be allowed to continue soliciting funds for the development of the Terra, Overseas and Diatom assets from the public or to use agents, brokers or representatives to effect such transactions. In fact there is overwhelming evidence that the aforesaid parties should not be allowed to solicit funds from the public for any similar transactions.
- 371 It is the view of the Committee that the business practices applied by the aforesaid parties constitute harmful business practices as defined in section 1 of the Act. These practices could not be justified in the public interest.

5. RECOMMENDATIONS

- 372 In view of the facts recorded under the heading "Evaluation of the business practices" the Committee recommends that the Minister -
- (a) in terms of section 12(1)(b) of the Act declares unlawful the practice whereby De Pinna, Harris, Romero, Eaton, Hindmarch, Oberholster, Hemisphere, Great African, La Roc, New Era, Redbark, Terra, Overseas and Diatom directly or indirectly
 - (i) invite any person to make an investment; or
 - (ii) receive investment funds from any person for management of such funds on his or her behalf; or
 - (iii) sell shares to any person,in respect of any of the following companies or in any asset of any of the following companies:
 - Hemisphere,
 - Great African,
 - La Roc,
 - New Era,
 - Redbark,
 - Terra,
 - Overseas,
 - Diatom; and
 - (b) in terms of section 12(1)(c) of the Act direct the parties to -
 - (i) refrain from applying the harmful business practice;
 - (ii) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;

- (iii) refrain from at any time applying the harmful business practice;
and
- (iv) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.

Louise A. Tager

**PROFESSOR LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE**

3 September 1996.

NOTICE 1555 OF 1996**DEPARTMENT OF TRADE AND INDUSTRY****HARMFUL BUSINESS PRACTICES ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice 554, published in *Government Gazette* No. 14895 of 23 June 1993, General Notice 503, published in *Government Gazette* No. 15758 of 27 May 1994, General Notice 512, published in *Government Gazette* No. 17142 of 26 April 1996, and General Notice 1231, published in *Government Gazette* No. 17399 of 30 August 1996 which report was published in General Notice 1554 in *Government Gazette* No. 17540 of 30 October 1996, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A. ERWIN**Minister of Trade and Industry****SCHEDULE**

In this notice, unless the context indicates otherwise—

"harmful business practice" means—

directly or indirectly—

- (a) invite any person to make an investment; or
- (b) receive investment funds from any person for management of such funds on his/her behalf or re-investment of such funds on behalf of the investor; or
- (c) sell shares to any person, in respect of any of the following companies or in any asset of any such companies:

Hemisphere Mining and Developments Ltd (05/05755/06);

Great African Resources Ltd (73/12993/06);

La Roc Mining and Investment Ltd (90/01575/06);

New Era Mines Ltd (05/22934/06);

Redbark Mines Ltd (71/09658/06);

Terra Exploration and Development Ltd (69/13549/06);

Overseas Mining Ltd (89/03913/06);

Diatom Filter Minerals Ltd (73/05422/06).

KENNISGEWING 1555 VAN 1996**DEPARTEMENT VAN HANDEL EN NYWERHEID****WET OP SKADELIKE SAKEPRAKTYKE, 1988**

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Algemene Kennisgewing 554 in *Staatskoerant* No. 14895 van 23 Junie 1993, Algemene Kennisgewing 503 in *Staatskoerant* No. 15758 van 27 Mei 1994, Algemene Kennisgewing 512 in *Staatskoerant* No. 17142 van 26 April 1996 en Algemene Kennisgewing 1231 in *Staatskoerant* No. 17399 van 30 Augustus 1996 kennis gegee is, welke verslag gepubliseer is by Algemene Kennisgewing 1554 in *Staatskoerant* No. 17540 van 30 Oktober 1996, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

A. ERWIN**Minister van Handel en Nywerheid****BYLAE**

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

"skadelike sakepraktyk"—

om regstreeks of onregstreeks—

- (a) uitnodigings aan enige persoon te rig om 'n belegging te maak;
- (b) beleggingsfondse van enige persoon vir bestuur of herbelegging van sodanige fondse namens die belegger, te ontvang; of
- (c) aandele aan enige persoon te verkoop, ten opsigte van enige van die volgende ondernemings of in enige bate van sodanige ondernemings:

Hemisphere Mining and Developments Bpk. (05/05755/06);

Great African Resources Bpk. (73/12993/06);

La Roc Mining and Investment Bpk. (90/01575/06);

New Era Mines Bpk. (05/22934/06);

Redbark Mines Bpk. (71/09658/06);

Terra Exploration and Development Bpk. (69/13549/06);

Overseas Mining Bpk. (89/03913/06);

Diatom Filter Minerals Bpk. (73/05422/06).

"the parties" means—

Michael Putnam de Pinna
(ID No. 410703 5103 10 9);
Wendy Harris (British citizen born 6 October
1935; Immigration Permit No. L/2298/63);
David Amargant Romero
(ID No. 630904 5185 00 4);
Cecil Loftie-Eaton (ID No. 610804 5105 00 9);
Leonard Hindmarch (ID No. 340616 5088 10 1);
Charles Oberholster (ID No. 731105 5006 08 8);
Hemisphere Mining and Developments Ltd
(05/05755/06);
Great African Resources Ltd (73/12993/06);
La Roc Mining and Investment Ltd
(90/01575/06);
New Era Mines Ltd (05/22934/06);
Redbark Mines Ltd (71/09658/06);
Terra Exploration and Development Ltd
(69/13549/06);
Overseas Mining Ltd (89/03913/06);
Diatom Filter Minerals Ltd (73/05422/06).

1. The harmful business practice is hereby declared unlawful in respect of the parties.
2. The parties are hereby directed to—
 - (a) refrain from applying the harmful business practice;
 - (b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;
 - (c) refrain from at any time applying the harmful business practice; and
 - (d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.
3. This notice shall come into operation upon the date of publication hereof.

"die partye"—

Michael Putnam de Pinna
(ID No. 410703 5103 10 9);
Wendy Harris (Britse burger gebore 6 Oktober
1935; Immigrasiepermit No. L/2298/63);
David Amargant Romero
(ID No. 630904 5185 00 4);
Cecil Loftie-Eaton (ID No. 610804 5105 00 9);
Leonard Hindmarch (ID No. 340616 5088 10 1);
Charles Oberholster (ID No. 731105 5006 08 8);
Hemisphere Mining and Developments Bpk.
(05/05755/06);
Great African Resources Bpk. (73/12993/06);
La Roc Mining and Investment Bpk.
(90/01575/06);
New Era Mines Bpk. (05/22934/06);
Redbark Mines Bpk. (71/09658/06);
Terra Exploration and Development Bpk.
(69/13549/06);
Overseas Mining Bpk. (89/03913/06);
Diatom Filter Minerals Bpk. (73/05422/06).

1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye onwettig verklaar.
2. Die partye word hiermee gelas om—
 - (a) af te sien van die toepassing van die skadelike sakepraktyk;
 - (b) op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk bedryf, of om enige inkomste daaruit te verkry;
 - (c) te gener tyd die skadelike sakepraktyk te bedryf nie; en
 - (d) te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.
3. Die kennisgewing tree in werking op die datum van publikasie hiervan.

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